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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1174th MEETING PRIN

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-17870 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth to twelfth periodic reports of Mauritius (CERD/C/280/Add.2 and HRI/CORE/1/Add.60) (continued)

1. At the invitation of the Chairman, the delegation of Mauritius took places at the Committee table.

2. Mr. SEETULSINGH (Mauritius) said that a substantial amount of additional information annexed to the periodic report had not been circulated to Committee members owing to constraints within the secretariat. In future all such information would be incorporated into the body of the report. Replying to questions and comments by Committee members, he said that the provisions of the Constitution concerning fundamental rights were based principally on the European Convention on Human Rights. The Constitution of Mauritius had been bequeathed by an Order-in-Council of the British Government at the time of independence in 1968. In so far as it had worked satisfactorily, it had not been deemed necessary to replace or amend it except when Mauritius had become a Republic in 1992 and the President had replaced the Governor-General.

3. With regard to the composition of the National Assembly, referred to in paragraph 6 of the report, of the 62 elected members there were 3 from each of the 20 constituencies in the island of Mauritius and 2 from the island of Rodrigues. The remaining eight members were appointed under a constitutional provision by an independent Electoral Supervisory Commission from among persons who had stood as candidates and, although they had lost, still had a significant following in terms of the number of votes cast, which explained the term "best loser". They were selected, as the first criterion, on the basis of the community to which they belonged. In reply to a comment by a member of the Committee, he would agree that persons of the Islamic faith did not constitute a race, but in Mauritius, Muslims, who constituted about 15 per cent of the population, had come to be considered a community as a result of their own insistence, after independence, on fair representation in the National Assembly and on the best loser system. Explaining that system further, he said that, after the elections, the Electoral Supervisory Commission ascertained community representation among the elected members and then selected four members from under-represented communities. The remaining "best losers" were selected along party lines to ensure fair party representation. The electoral system, including the provision for eight selected best losers, had been worked out by representatives from the United Kingdom, had satisfied all parties and communities at the time, had ensured a smooth transition to independence and had on the whole worked satisfactorily. Community data for that purpose were based on the 1972 census because later census forms no longer contained any question on community affiliation, in line with the new government policy of "one people, one nation". In more recent censuses, such as that of 1990, respondents were given the option of stating to which religion they belonged, and many had done so. In fact, the large religious families more or less tallied with the "community" breakdown into Hindu, Muslim, Sino-Mauritian and "general population", the latter term referring to people of French, African and mixed

descent and possibly devised as a designation of all Christians, of whatever origin or race. It was meant to avoid creating divisions within society and seemed to be generally accepted.

4. Most Hindu or Muslim Mauritians had come from the Indian sub-continent as indentured labourers for the sugar-cane plantations after the abolition of slavery in the colonies. Because neither Pakistan nor Bangladesh had existed at the time, Hindus and Muslims alike were regarded as being "of Indian origin", and it was somewhat by accident that they had come to be regarded as different communities.

5. Within the context of its policy of unity in diversity, Mauritius encouraged various forms of cultural diversity. In addition to the cultural centres referred to in paragraph 89 of the report, there was also an active British Council and Alliance française. Tolerance and respect for other cultures were hallmarks of Mauritian society. The Government had extended substantial support, including subsidies, to the propagation of various cultures and religions. About 65 per cent of the population was of Indian origin - 50 per cent of them Hindu and 15 per cent Muslim - and some 30 per cent of European, mixed and African descent, while the remainder were mainly of Chinese origin.

6. The Convention did not have force of law in Mauritius, but was of a persuasive character in view of the emphasis placed by the courts on the importance of respecting international obligations. To date, the Convention had not been invoked in any judgement, but reference was frequently made to the International Covenant on Civil and Political Rights and to decisions of the European Court of Human Rights.

7. He agreed that people might be afraid to report cases of racial discrimination, but he did not believe that to be the case in Mauritius, where apparently there had simply been no victims of racial discrimination. A private company was free to recruit the candidate of its choosing to a vacant post. It might happen that such a company - and he cited in that connection French ownership of 16 out of the 17 sugar factories in Mauritius and of much of the land - gave preference in recruitment to a member of one community rather than another, but proof of discrimination would be needed, and no such claims had ever been made. That being said, he referred the Committee to the proposed establishment of a watchdog body, the Equal Opportunities Commission. In the public sector, a similar role was performed by the independent Public Service Commission, any discriminatory decision of which could be reviewed by the Supreme Court.

8. The Public Gathering Act 1991, although it did not refer specifically to the prosecution of organizations, did provide for the prosecution of individuals promoting racial hatred. Since an organization was a body of individuals, that body would also be liable to prosecution. Consideration could perhaps be given, however, to amending the law to introduce an offence relating specifically to organizations. There was no ban on the establishment of organizations representing the interests of one community. There was, for instance, a political party called "Hezbollah", which had been set up to protect Muslim interests but it had not been involved in stirring up racial

hatred or attacking the interests of other communities. The large national parties sought to ensure that their membership covered all communities.

9. On the subject of personal law and the comments of the Human Rights Committee, to which members had referred, he pointed out that the relevant chapter of the Constitution had been annexed to the periodic report, but had unfortunately not been circulated to members. The point was that section 16, subsection 4 of the Constitution did allow for the application of personal laws, i.e. with respect to adoption, marriage, divorce, burial, devolution of property, death and other similar matters. No personal laws had as yet been introduced in Mauritius, although there had been a move by some Muslims to introduce Islamic personal law. Permissible though that was under the Constitution, consideration would need to be given to certain aspects that might conflict with equal rights. Under Mauritian law, all citizens, including Hindus were now required to undergo the formality of a civil marriage so as to give marriage legal force and protect spouses. "Natural" children of previous religious marriages had the same succession rights as "legitimate" children. Civil law continued to follow the French Civil Code, while the law of criminal procedure, a large part of civil procedure and Mauritian law of evidence, administrative law and constitutional law were all based on British law. Extensive personal law reforms in France in the 1960s, particularly concerning women's rights, had been introduced into Mauritius in 1981. The outcome was a complex mixed system of British and French law, on which had been grafted a whole system of specifically Mauritian law built up from precedents, judicial decisions and reporting from the Supreme Court.

10. Regarding the publication of the book entitled The Rape of Sita, on which the Human Rights Committee had taken a strict stand in the name of freedom of publication, he explained how the title had caused offence to those who worshipped Sita, a Hindu goddess, and how they had protested to the Prime Minister. The book had not been unofficially banned as ridiculing a holy name. The book itself, which indeed made a positive contribution to understanding about relations between men and women, was not discriminatory in itself but was thought to constitute a potential incitement to discontent and violence. Again, out of respect for the beliefs of other communities, the Government had prohibited the import of Salman Rushdie's The Satanic Verses.

11. In reply to a question about freedom of movement, he assured the Committee that there were no restrictions, save in regard to private property or security areas in ports or airports for example.

12. Members had asked about the use of minority languages in schools. Under the Education Act, the official language of teaching was English, although French was also used. Creole and Bhojpuri were not used, even in primary schools, because the Government considered that children should learn English and French as quickly as possible in order to improve their later employment prospects. Creole and Bhojpuri were not banned in schools, and a teacher might use them occasionally, for instance to explain a difficult concept.

13. A knowledge of English or French was essential for access to university. Primary and secondary education were free, and there were plans to introduce free pre-primary education. Religious schools were allowed to reserve 50 per cent of their places for pupils of the religious group

concerned. A number of places in State schools were reserved for pupils studying oriental languages. State schools were free, but fee-paying schools also existed.

14. The Constitution stated that the language used in the National Assembly should be English, because all laws were now passed in English, but most educated persons were competent in both English and French. A defendant appearing before a court was provided with an interpreter if he or she did not understand the language of the court: that had been the case, for instance, in prosecutions of alleged drug couriers from India who spoke neither English nor French.

15. No language was specified for the electoral process. As in some other countries, election candidates were allotted a symbol so that even illiterate voters could identify them on the ballot paper.

16. Most newspapers were in English or French, but items in Creole were published occasionally: that sometimes caused problems because there was no standard form of the written language. Radio and television programmes were broadcast mainly in English and French, with daily public information programmes on agriculture, health and hygiene in Bhojpuri and Creole. Several new radio and television stations were planned. Radio and television stations were run by a corporation which had been set up by the State but was completely independent, and anyone with a serious complaint could take it before the courts.

17. At present, the Ombudsman did not deal directly with cases of racial discrimination, but concentrated on alleged maladministration in the public service.

18. Mr. AHMADU said that, even if the Government did not wish to distinguish between the various ethnic groups in future censuses, it might define broader groups such as "Mauritians of Indian origin" or "Mauritians of African origin".

19. Mr. SHAHI noted that the information provided referred to various communities, but not to the indigenous population. Who and how many were the indigenous inhabitants of Mauritius?

20. If there was no system of personal law for communities such as Hindus or Muslims, were wills made in accordance with systems of personal law invalid? He would also like to know whether children of a marriage contracted according to personal law were considered natural or legitimate.

21. He noted that the additional written information provided by the Mauritian delegation distinguished between "Islam", "Mohammedan", "Muslim" and "other Muslim" communities. What was the difference between them?

22. Mr. ABOUL-NASR noted that the representative of Mauritius had stated that large areas of land, and in particular the large plantations, were owned by descendants of the French colonists. Did that mean that land ownership tended to be concentrated in the hands of one ethnic group, thus perpetuating the social structure of the pre-independence period? He asked about the

percentage of non-Europeans who owned property, especially large areas such as plantations, and how ownership patterns had changed in the recent past. If there was a tendency for landowners to employ people from their own community, as the representative had stated, the situation would be likely to perpetuate itself.

23. Mr. GARVALOV (Country Rapporteur) thanked the Mauritian delegation for its report and for its straightforward and honest replies to the Committee's questions. He hoped that some of the issues raised would be discussed more fully in the next report. He had been particularly encouraged to hear that the Government might consider amending its legislation to improve its implementation of article 4 of the Convention, particularly subparagraph (b) dealing with the prohibition of racist organizations.

24. Mr. SEETULSINGH (Mauritius) said that the Government had decided to conduct censuses of the population without breaking the data down to indicate ethnic groups. However, the percentages of the total population represented by the various groups were likely to remain constant for some time, so some conclusions about them could still be drawn.

25. In reply to Mr. Shahi's question, he said that Mauritius had no indigenous population. The first visitors to the island had been Arab and Portuguese sailors, and it had then been colonized by the Dutch.

26. Matters of family law such as marriage, divorce and inheritance were governed by the Civil Code (based on the French Civil Code). In particular, the law on inheritance followed the French pattern whereby a person could not completely disinherit his or her children. In the past, there had been cases of people marrying in a religious ceremony and having children, and then marrying someone else in a civil ceremony: in that case, the children of the first marriage were considered natural children and only those from the second marriage were legitimate. The law had now been changed to make a civil marriage ceremony compulsory.

27. The terms "Mohammedan", "Muslim", and "Islam" should probably all be taken to mean "Muslim".

28. The owners of the large plantations were generally descendants of French sea captains and other colonists who had been granted the land by France. The current owners had, of course, been Mauritian citizens for generations and their property rights were guaranteed by law. In general, the plantations were prosperous and well managed and there seemed to be no public resentment about their ownership.

29. The CHAIRMAN said that the adaptability and ethnic harmony of Mauritian society was indeed a model for other countries to follow. The Committee had thus concluded the first part of its consideration of the eighth, ninth, tenth, eleventh and twelfth periodic reports of Mauritius.

30. The Mauritian delegation withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Bosnia and Herzegovina

31. At the invitation of the Chairman, the delegation of Bosnia and Herzegovina took places at the Committee table.

32. Mr. van BOVEN said that the Committee was in a unique position to assist Bosnia and Herzegovina and would gladly help in any way the delegation might suggest. On the basis of the discussion earlier in the session, he had drawn up a preliminary paper suggesting points to be included in the Committee's decision on Bosnia and Herzegovina. The discussion had focused on the report of the Special Rapporteur of the Commission on Human Rights, the statement made by the President of the Security Council on 8 August 1996 and the worrying trend in Bosnia and Herzegovina towards increased ethnic division. The Committee had noted that some parties to the Dayton Peace Accords were ignoring their international obligations under Chapter VII of the Charter of the United Nations and the Accords themselves by not arresting and transferring people who had been indicted by the International Criminal Tribunal for the Former Yugoslavia. The Committee had noted the divided opinions on the expediency of holding elections as the situation stood.

33. Mr. ABOUL-NASR said that the Dayton Accords were a compromise and, as such, far from perfect, particularly when looked at from the point of view of the Convention. The Committee would be interested to hear how it could best help find solutions to the problems facing Bosnia and Herzegovina.

34. Mr. BIJEDIC (Bosnia and Herzegovina) said that there was much confusion on the ground in Bosnia and Herzegovina, compounded by efforts to appease the party responsible for the horrors that had taken place there. The Dayton Accords were a compromise that had brought a fragile peace to Bosnia at the same time as preserving the Serb entity that had emerged from aggression and genocide. When pointing the finger of blame for the aggression, the Dayton Accords were selective. They singled out only two or three people, overlooking others such as Mr. Krajisnic, the President of the so-called Assembly of the Serb Republic. Perhaps it was time for a new Dayton agreement.

35. The Committee had every justification for its concern over the expediency of elections. There was no freedom of movement, refugees could not return home and there was no freedom of the press. The Dayton Accords stated that persons should vote in their place of origin. That was not what would happen. People were going to be forced to vote where they where. The Croats and Serbs would force people to vote in the occupied territories of Bosnia and Herzegovina - Herzeg Bosna and the Serb Republik - which would grossly distort representation on communal councils. The aggressors would become deputies and the whole process of the peaceful and democratic integration of Bosnia and Herzegovina would be wrecked. It did not appear likely that there would be any stability in Bosnia and Herzegovina, and a new war was not out of the question.

36. The Committee was also right to be concerned at the situation regarding the International Criminal Tribunal for the Former Yugoslavia. All sides had committed atrocities during the war. However, there was a difference both in the scale of and reasons for the atrocities by Bosniaks. They had been on the verge of being wiped out by Serbs who had not only been better equipped, but had also had the support of the so-called Yugoslav army. In 1993, the Croats had entered Bosnia and Herzegovina, which was thus under attack from two sides. Bosniaks who had been found guilty of atrocities had been duly handed over to the Tribunal.

37. It was unfortunate that the Special Rapporteur of the Commission on Human Rights had not started her work where her predecessor had stopped.

38. It was unacceptable that some European countries appeared to be continuing to appease elements, namely the Serbs, that they had been appeasing for four years. At least three countries in Europe were ready to forgive the aggressors, and one country clearly sided with the second aggressor.

39. The CHAIRMAN asked how the provisions of the Convention could best help improve the situation in Bosnia and Herzegovina.

40. Mr. BIJEDIC (Bosnia and Herzegovina) said that anything the Committee could do would be welcomed by the Government of Bosnia and Herzegovina. The Government had three strategic policy aims. The first was to solicit the support of all Committees, Governments and so forth for the peaceful and democratic reintegration of the State of Bosnia and Herzegovina along the lines of the Dayton Accords. The second was to solicit support for the rehabilitation and reconstruction of the country's economy, the employment of refugees and displaced persons and the creation of a sound basis for development. The third was the establishment or improvement of State and social institutions.

41. Mr. GARVALOV said that the three policy aims should be included in the paper that Mr. van Boven had agreed to draft. The Committee had, during its discussion on Bosnia and Herzegovina, been concerned that, in addition to being a compromise, the Dayton Accords looked likely to partition the State along ethnic lines, which was the opposite of what was advocated in the Convention. It was the Committee's duty to support the existence of an independent State and it would do all it could to help solve the problems in Bosnia and Herzegovina.

42. Mr. WOLFRUM wondered what alternative there might be to the elections as envisaged and whether, if they were manipulated, conflict would in any event ensue. Were the elections as planned not simply a consolidation of ethnic cleansing?

43. The reconstruction of Bosnia and Herzegovina as envisaged by the Dayton Accords was clearly a complicated task, and he wondered what plans there were for implementing that part of the Accords, whether any steps had already been taken or whether plans would not be made until after the elections.

44. Mr. YUTZIS said that, having studied the Dayton Accords, it had come as no surprise to hear that a new war could not be ruled out. The Accords would not solve the underlying conflict in the region.

45. Regarding the three strategic policy aims referred to, the Committee should be able to play a part in the strengthening of institutions and, more particularly, of the social fabric essential to those institutions. Some additional information might shed more light on the specific role which the Committee could play in helping to solve the underlying problems in the region, bearing in mind its expertise in inter-ethnic conflict.

46. Mr. de GOUTTES expressed full support for the proposals made by Mr. van Boven, particularly concerning the strengthening of cooperation with the International Criminal Tribunal for the Former Yugoslavia.

47. With regard to the various institutions provided for in the Dayton Accords, he asked what progress had been made with the establishment of a Human Rights Chamber, whether it was operating and, if so, whether it had handed down any decisions.

48. What was the role of the Ombudsman for Bosnia and Herzegovina and what results had she obtained so far? What cooperation was there between her and the Bosnian authorities, and between the Bosnian authorities and the Special Rapporteur of the Commission on Human Rights?

49. The Dayton Accords had also made provision for a body to deal with the question of the ownership of property which had been expropriated and of reparations and he asked whether that body was now operating.

50. Mr. SHAHI said that the grim analysis of the situation in Bosnia and Herzegovina was a matter of deep concern to the Committee and he endorsed the views of other members and the desire of the Committee to be helpful, particularly in respect of implementing article 4 of the Convention and strengthening Bosnia's institutions in any other way.

51. The most important question was how to maintain and strengthen the fragile peace. In that connection, the Committee should give some thought to the need for a successor force to IFOR after its withdrawal at the end of 1996. Unless peace was maintained it would be impossible for the Committee to help in any way to strengthen institutions in Bosnia and Herzegovina.

52. Mr. RECHETOV said that, in trying to establish its role in the process established in the Dayton Accords, the Committee had to recognize the Accords as being the only solution available and should refrain from undermining them.

53. The International Criminal Tribunal for the Former Yugoslavia concentrated on war crimes and genocide but did not appear to focus on ethnic cleansing. The Committee should therefore encourage the Tribunal to continue its work and punish all those responsible for war crimes. In that connection he drew attention to his draft decision, which was intended to supplement the proposals by Mr. van Boven.

54. Mr. BIJEDIC (Bosnia and Herzegovina) said that the Dayton Accords represented a step forward and although it remained a compromise, it was all that could be achieved.

55. Welcoming the positive comments and support of the Committee, he emphasized the need for active support for all three strategic aims to which he had referred, as they were all interrelated. The Committee's role lay in strengthening the institutions in order to promote reconciliation and democratization and to bring to justice those who had been indicted.

56. The questions raised by Mr. de Gouttes could not be answered because the mission had received no information about the activities of the Human Rights Chamber or the Ombudsman. However, his Government was ready to cooperate with all foreign representatives in Bosnia and Herzegovina, whatever their field of activity. The Special Rapporteur of the Commission on Human Rights was doing her best but lacked the resources to do more than maintain calm and equilibrium.

57. As Mr. Shahi had stated, peace had to be preserved regardless of the compromise represented by the Dayton Accords and of the resistance of separatist forces and of those who were growing rich from the spoils of war. The Government was committed to democracy and peace and would insist on some kind of military presence after IFOR.

58. The CHAIRMAN thanked the representative of Bosnia and Herzegovina for his contribution to the Committee's discussions, and expressed the hope that there would be further useful contacts between his Government and the Committee.

59. The delegation of Bosnia and Herzegovina withdrew.

The former Yugoslav Republic of Macedonia

60. At the invitation of the Chairman, Mr. Belcev (The former Yugoslav Republic of Macedonia) took a place at the Committee table.

61. The CHAIRMAN said that, having been informed about some of the ethnic tensions in Macedonia and the apprehensions concerning them, the Committee had considered it preferable to open a dialogue with a representative of that country at its current session rather than to wait for its initial report.

62. Mr. BELCEV (The former Yugoslav Republic of Macedonia) said that Macedonia was one of the independent States which had emerged after the dissolution of the former Yugoslavia, having gained independence in a peaceful way as the only successor to the former Federation. It had established the legal framework and the institutions necessary for the functioning of society and the strengthening of human rights standards and mechanisms.

63. Its Parliament consisted of 120 members, some 20 of which represented ethnic Albanians. There were three political parties, with the governing party accounting for almost two thirds of the seats in Parliament.

64. The country's legal framework to a great extent conformed to international human rights standards and in some ways went beyond them. The

national minority groups had been accorded a special position under the Constitution, thus providing a sound basis for the further promotion and protection of minority rights.

65. The High Commissioner for Human Rights had maintained his office in the country for the purposes of continued cooperation and dialogue with the Government.

66. Despite current political tensions, education was not threatened. Citizens had equal access to education which was provided in the mother tongue of the minorities up to baccalaureate level. In addition, a special quota system operated in both universities to promote the entry of minority students.

67. As the mission had received very short notice of the meeting, it had not had time to prepare more information or to receive instructions or data from the capital.

68. The competent authorities were preparing the initial report under article 9 and hoped to submit it on time.

69. The CHAIRMAN thanked the representative of Macedonia for addressing the Committee and said he looked forward to receiving his country's initial report and to considering it in March 1997.

The meeting rose at 1 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1175th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (continued)

Situation in Rwanda

Situation in Burundi

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria

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GE.96-17886 (E)

The meeting was called to order at 3 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Situation in Rwanda

1. Mrs. SADIQ ALI (Special Rapporteur) said that the reason why the Committee had received nothing from Rwanda, despite the representative's assurance in March 1994 that a report would be submitted, was that the country's difficulties had continually worsened since then. Referring basically to United Nations documents, but also to reports in the written a oral press and from various NGOs, including Médecins sans frontières and Human Rights Watch, she noted that the Arusha Agreement, which had been sig in August 1993 and provided for the establishment of a transitional Government, the reform of the national army, which was to accept members of the Rwandese Patriotic Front (RPF), and the return of 1 million displaced persons to their region of origin, had not been applied and that the poorly equipped and poorly financed United Nations Assistance Mission for Rwanda (UNAMIR) had been powerless to ensure a peaceful transition, protect the civilians and seize illegal weapons, as provided for in the Agreement. Wit the death of President Juvenal Habyarimana, the RPF had ended the cease-fir in force since the signing of the Agreement, the peace process had been bro off, the massacre of civilians had begun and the RPF's victory had caused 1 million refugees, principally Hutus, to take to the roads.

2. France had then made a "humanitarian" intervention and launched "Opération turquoise", which neither the RFP nor the OAU had approved and to which the Security Council had consented only reluctantly. France had succeeded in proclaiming an area equivalent to one fifth of the territory a "safe humanitarian zone", but, although it had managed to save a few lives, had also been accused of protecting the Hutus, who had been responsible for the massacres.

3. The Security Council had chosen to minimize the seriousness of the situation by refusing to view it as genocide and, after the decision by Belgium, supported by the United States, to withdraw its contingent, it had been decided that UNAMIR would be considerably reduced and would attempt to persuade the participants in the "civil war" to respect a cease-fire. The w had continued, however, and no one, not even the OAU, had been willing to acknowledge that genocide was taking place until May 1994.

4. In May 1994, however, on the proposal of the High Commissioner for Hu Rights, a special rapporteur for Rwanda had been appointed and had confirme the existence of genocide. It had been belatedly decided that UNAMIR would strengthened, but that decision had been implemented too late and it had be impossible for UNAMIR to act effectively. The Security Council had also ma unsuccessful efforts to achieve a reconciliation. When the full extent of genocide had finally been confirmed, in particular by the Commission of Experts on Rwanda, established by the Security Council to assess the situation, the Security Council had established an international tribunal a

the Rwandan authorities had decided to cooperate with it, but without making a distinction among those responsible for atrocities in terms of which side they had taken during the conflict.

5. The groups hardest hit by the hostilities had been Tutsi women or women who had married Tutsis, who had been raped when not massacred; children, of whom 47 per cent of the survivors had seen other children participate in the massacres, in particular child soldiers recruited into the Rwandan armed forces; and members of the Twa ethnic group, who had been caught in the middle and had probably been torturers as well as victims.

6. As an effort towards reconciliation, the Government which had emerged from the RPF victory had announced that citizens' identity cards would no longer carry a reference to ethnic origin, that the victims of the massacres would be compensated and that a genuine national army would be formed. The task was extremely difficult, however, for one Rwandan out of five had taken refuge abroad. Without assistance from the international community, it would be difficult for them to return, if only because of the food shortage and the persisting bitterness against the Hutus. Their return, was nevertheless necessary if the country was to recover economically. In January 1996, a coordination meeting had been held in Geneva to study the human rights situation in the Great Lakes region. The Special Rapporteurs on Burundi, Rwanda and Zaire had spoken of the disgraceful impunity enjoyed by those responsible for the genocide, the resurgence of human rights violations and the refugees' reluctance to return home. Some host countries, such as Zaire, had begun to expel Hutus from their territory. While Rwanda was unable to cope with them the Zairian hills were being invaded by people fleeing. Fortunately, Zaire had finally endorsed a United Nations voluntary repatriation programme.

7. The situation should therefore return to normal, thanks in particular to international aid. With the lifting of the Security Council embargo, however, weapons, primarily from France, South Africa, Uganda and North America, were again pouring into Rwanda and she feared that the arms traffic, which was one of the main factors in the atrocities committed, would threaten to destabilize the entire region.

8. The CHAIRMAN thanked Mrs. Sadiq Ali. It might have been preferable for her carefully compiled information to be distributed in a written document, but it would then have been difficult for the Committee to reflect the information in its work. That might be a weakness in the Committee's working methods, which it should try to correct.

9. He requested Mr. Wolfrum to introduce the draft resolution on Rwanda.

10. Mr. WOLFRUM, introducing the draft resolution on Rwanda (CERD/C/49/Misc.12/Rev.3, distributed in the meeting room in English only), said that the Working Group on Rwanda had held only one short meeting, following which he had been asked to prepare a draft resolution for the Committee. The text under consideration was a first draft despite the "Rev.3" in its symbol. The changes he had made were the result of discussions he had

held with several members of the Committee, but not in the Working Group. He described the contents of the draft resolution, which consisted of seven preambular paragraphs and nine operative paragraphs.

11. The CHAIRMAN invited the members of the Committee to comment on the draft resolution.

12. Mr. AHMADU and Mr. SHERIFIS said that they would like the consideration of the draft resolution to be postponed, since they had not had time to read it.

13. Mr. SHAHI said that he was generally in favour of Mr. Wolfrum's draft text. He particularly agreed with paragraph 5, which called on neighbouring countries not to tolerate military activities in their territory aimed at destabilizing Rwanda, and paragraph 3, which related to punishment of the guilty and was essential for restoring confidence. He would like Mr. Wolfrum to explain why the draft resolution did not mention the conclusions on the situation in Rwanda which the Committee had adopted at its February-March 199 session (A/49/18, paras. 61-72).

14. Mr. DIACONU said that the texts being adopted by the Committee were beginning to look more and more like General Assembly resolutions, which obviously carried much more weight than the Committee's resolutions. If it continued to produce such texts, its recommendations would not be taken at a seriously. The Committee should limit itself to issues within its mandate. The text under consideration contained many paragraphs that were unrelated t its sphere of competence - the best example being paragraph 5, to which Mr. Shahi had referred. He himself had preferred the first version of the document.

15. Mr. CHIGOVERA said that he endorsed Mr. Diaconu's statement. When he had agreed to take part in the Committee's Working Group on Rwanda, he had thought that the Committee intended to try a new approach, to put forward ne ideas and not repeat what had been said time and time again to no avail.

16. In attempting to resolve a political situation, a choice had to be mad between "reconciliation" - he was deliberately choosing that term, which was stronger than the term "compromise" - and justice, or identifying and punishing those responsible. It was not possible to seek both objectives at the same time. If justice was chosen, both parties should be held to the sa requirements. There was one thing missing in the draft resolution: it did not mention the recent events in Rwanda.

17. The text to be adopted should be addressed to the General Assembly. I the goal was to bring international pressure to bear on the two parties to t conflict, there would not be much point in addressing it to the Rwandan authorities.

18. Mr. van BOVEN said that he shared the views of some of the preceding speakers. The draft resolution might easily have been adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Committee was tending to lose sight of the Convention and to be too ambitious, to its own detriment and that of the cause it defended. The

Committee's mandate in the area of early warning and urgent procedures was far from undisputed. It was for the Committee to demonstrate its value by adopting measures from the particular perspective of the Convention. Like Mr. Diaconu, he believed that the draft resolution went beyond the Committee's mandate, while the text it had adopted in March was much closer to the concerns underlying the Convention.

19. Mr. WOLFRUM said that it was not easy to find a new approach that also went further than the one adopted by the Committee at its spring session.

20. Mr. SHAHI said he disagreed with Mr. Diaconu's view that paragraph 5 of the draft resolution was unrelated to the objectives of the Convention and hence the Committee's mandate. What the States bordering Rwanda were being asked to do in that paragraph was to prevent incitement to racial hatred and even racial war, and that was quite obviously within the purview of article 4 of the Convention.

21. Mr. ABOUL-NASR said that he fully endorsed Mr. Diaconu's and Mr. van Boven's views. The text adopted should be in the style not of a resolution, but of a declaration, and contain one brief, descriptive paragraph stating that the Committee had held an exchange of views on the situation in Rwanda in the absence of a representative from the State because the State had refused to send one.

22. The CHAIRMAN said that, if he heard no objection, he would take it that the members of the Committee wished to suspend their consideration of the question.

23. It was so decided.

Situation in Burundi

24. At the invitation of the Chairman, Mr. Mikaza (Burundi) took a place at the Committee table.

25. Mr. de GOUTTES (Country Rapporteur), summarizing the Committee's work on Burundi, said that, in March 1994, the Committee had considered the situation in Burundi in the presence of a delegation from the country. In its conclusions, it had expressed deep concern about the massive ethnically motivated violence in Burundi and the subsequent systematic human rights violations. The Committee had recommended: first, that the military, the police and the public service should be restructured so as to include representation by all ethnic groups; secondly, that the judiciary should be reformed and provided with the means to function under conditions of independence and security; thirdly that proceedings should be instituted to end the impunity enjoyed by the perpetrators of the ethnically motivated massacres and other human rights violations; and, fourthly that particular attention should be paid to the problem of refugees and the restoration of the rights of displaced persons. The Committee had offered its assistance and expertise, which would be useful for legislative and judicial reform, the training of law enforcement officials and the establishment of a national institution for the protection of human rights (A/49/18, paras. 46 to 50).

26. At the beginning of the current session, on 6 August 1996, the Committee had held an exchange of views with the High Commissioner for Human Rights, Mr. Ayala Lasso, on the situation in Burundi. The High Commissioner had referred to the statements of the President of the Security Council and had distributed a report to the members of the Committee on the human rights situation and the activities of the human rights observer mission in Burundi for the period 18 April-15 July 1996, which had been extensively commented on in the press. The members of the Committee had held an exchange of views on the most recent events in Burundi: the massacre of 312 Tutsis on 20 July 1996 at Bugendana, the overthrow of the Government on 25 July and the assumption of power by Mr. Pierre Buyoya and the continuing reports of inter-ethnic violence. The High Commissioner had spoken of his intentions for Burundi: to maintain the presence of the human rights observer mission and ask for the number of observers to be increased to 35.

27. The Committee awaited frank and up-to-date information from the representative of Burundi on the status of the inter-ethnic conflicts taking place in the country.

28. Mr. MIKAZA (Burundi) said that, before replying to questions, he would like briefly to review the considerations underlying the change that had taken place in the country three weeks earlier. The priority goal of the new Government had been to end the disastrous political crisis into which the forces of evil had plunged the country. What had occurred was not a coup d'état by reactionary forces against democracy, but an attempt to save the nation. The Government, the Parliament, the party and society at large had all proved incapable of resolving the country's dilemma. In view of a situation that had become inextricable, the key sectors of the nation had turned to Mr. Pierre Buyoya, a national figure known for his patriotism and undisputed commitment to democracy.

29. The change had not been an end in itself and the Government itself had set the following objectives: First, to end the massacres and genocide, to which end the entire population, including all ethnic groups, had to be protected against the madness of the killers; secondly, permanently to restore peace through an open and honest dialogue, for which the Government had set itself a three-year deadline; thirdly, to organize a national debate to lay the bases for peaceful cohabitation among all the groups comprising the nation; fourthly, to rehabilitate the system of justice and end impunity, all disputes being settled in the courts with complete transparency; and, fifthly, to reintegrate all the refugees and displaced persons. Once the necessary socio-political conditions had been met, efforts would aim at ending the waste, stopping the systematic looting of national resources and revitalizing the economy.

30. It was evident that all the aspects to which Mr. de Gouttes had drawn attention were included in the Government's programme. The restructuring of the administration, the police and the military was also one of the new Government's basic concerns.

31. Mr. de GOUTTES noted that, after an exchange of views with the United Nations High Commissioner for Human Rights and on the basis of the information available to it, the Committee had adopted a resolution on Burundi

and provided the representative of the State party with a copy. The goals described by the representative of Burundi were fully in line with the recommendations contained in the resolution. The Committee should monitor their implementation closely.

32. Mr. ABOUL-NASR said that he had taken note of the objectives which the new Government had set, but did not understand why it had not been able to convince the neighbouring States.

33. The basic problem was still the same: since the Tutsis, who were in the minority, were the overwhelming majority within the army which had just taken power, how could the Hutu majority have confidence in the new regime? What measures had the Government taken or did it intend to take to restore the power of the majority, without which there was little chance of settling the conflict?

34. Mr. AHMADU, noting that the Government would have trouble surviving without its neighbours' support, asked what steps it had taken to become reconciled with them. Since the head of State was now performing civilian functions, could he still control the army?

35. Mr. WOLFRUM, referring to article 5 (b) of the Convention, which guaranteed the right of everyone to security of person and protection by the State against violence or bodily harm, said that his attitude towards the new Government would change completely if the representative of the State party could confirm that the massacres had ceased since the new Government had assumed power.

36. Mr. DIACONU said that it would be interesting to know whether the new regime had begun attacking the forces of evil referred to by the representative of the State party, in the military and the police, as well as in the civilian population. Concrete measures were what counted, for the old regime had also had laudable intentions. What steps had been taken to prevent further massacres? The representative of Burundi had spoken of restoring peace through dialogue: what kind of dialogue and how was it to begin? Since the country did not have enough judges and assessors and since the means available to the system of justice were insufficient, what steps had the Government taken or did it intend to take to end impunity?

37. Mr. CHIGOVERA noted that, in paragraph 5 of its resolution on the situation in Burundi, the Committee had mentioned the initiative of former President Nyerere of the United Republic of Tanzania, which the Organization of African Unity had fully endorsed. He would like to know the Government's attitude towards that type of initiative.

38. Mr. MIKAZA (Burundi), referring to Mr. Wolfrum's comment, said that the new Government had to be given time to act. To say that the violence had ceased would be an untruth, for the forces of evil were still there. It was encouraging, however, to note that the acts of violence were decreasing, as many international observers had recognized. Only one incident had been reported in the past three weeks.

39. Replying to Mr. Diaconu, he said that the national debate mentioned earlier had already been announced in the electoral timetable. It should begin in October. All Burundians without distinction would be invited to tak part, including the armed groups and militias, provided, naturally, that they gave up the ideology of genocide.

40. Justice was at the heart of the new Government's concerns. The Government that had emerged from the National Convention had asked for assistance from the Centre for Human Rights and other international forums in that area. The new Government would maintain the contacts that had been established, for it knew that the best way of restoring confidence was to end impunity and introduce a sound system of justice in which the entire population had confidence.

41. He had not been provided with the text of the Committee's resolution on Burundi. A ministerial delegation from Burundi had visited Mr. Julius Nyerere only two days earlier. The initiatives should continue, if only to end an embargo that was serving the interests of no one. The contacts had begun to bear fruit, for the Tanzanian and Kenyan Governments had given permission for trucks carrying humanitarian aid to travel through their territory.

42. Replying to a question by Mr. Aboul-Nasr, he said that the events that had led up to the change of Government had taken the neighbouring States by surprise. It was for the Government to convince its counterparts of the seriousness of the crisis in Burundi and help them understand that the embar was not the solution, since it simply hit the most vulnerable groups harder.

43. Confidence had been established and much remained for the Government t do in that area. It had a number of advantages to do so. First, there was the personality of the President, who had always risen to the occasion when the country had been in need. There was also the fact that the new Governme was determined to involve all the population groups in the management of the country's affairs.

44. The question of the Burundian army was extremely complex. Although th Tutsis were dominant among the officers, there were nearly as many Hutus as Tutsis in the rank and file. The Government had already taken measures to encourage more Hutus to join the armed forces.

45. Replying to a question by Mr. Ahmadu, he said that the new Government would convince its neighbours by its actions, for which it would have to gai the people's trust. One of its first measures should be to prosecute the murderers of former President Ndadaye, some of whom were members of the military, and anyone who had committed massacres. No solution was possible for the crisis in Burundi as long as they went unpunished. In reply to another question by Mr. Ahmadu, he said that President Buyoya, although currently performing civilian functions, remained the supreme commander of t armed forces.

46. Mr. de GOUTTES said that the secretariat had made arrangements for the representative of the State party to be provided with a copy of the Committee's resolution on Burundi. Mr. Aboul-Nasr had raised the real problem: it could well be asked whether the Hutu majority could trust the

Tutsi minority. That was the crux of the crisis and the Government would be judged on its ability to cope with that problem. The State party should be asked to arrange for a delegation from Burundi to appear at the beginning of the following session to inform the Committee of the progress made in achieving the objectives set by the new regime.

47. Mr. Mikaza (Burundi) withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (continued) (CERD/C/49/Misc.3/Rev.4)

48. The CHAIRMAN invited the Committee to consider the text prepared by Mr. Wolfrum, which had been distributed in English only.

49. Mr. van BOVEN said that the draft text had been revised to take some of his comments into account, especially regarding the connection between the refugee problem and the Committee's mandate. The reference in paragraph 1 to the Committee's General Recommendation XX (48) was, however, not sufficient and paragraph 2 should contain a more explicit reference to the Convention.

50. Mr. WOLFRUM said that the draft text made a clear reference to ethnic criteria from the first preambular paragraph onwards. Mr. van Boven's earlier suggestion that the beginning of paragraph 2 should state that no discrimination should be practised in connection with the rights and obligations mentioned in the rest of the text might have the wrong effect, since refugees belonging to certain ethnic groups might be rejected by their country of origin. That would be contrary to the rules of international law and probably also to the Committee's intentions. It should therefore be possible to find another wording for paragraphs 1 and 2 which would dispel Mr. van Boven's concerns.

51. Mr. ABOUL-NASR said that, as a matter of principle, the Committee should avoid adopting too many general recommendations at every session, at the risk of creating confusion. As to the draft text under consideration, he agreed with Mr. van Boven that the Committee would be well advised to consult the bodies of the United Nations system which dealt with the refugee question. The proposed text referred only to the possibility for the refugees and displaced persons of returning to and resettling in their countries of origin, whereas the international instruments dealing with refugee problems also provided for the possibility of settlement in the host country and resettlement in a third country. Solutions should also be adapted to the specific features of each situation. The question of the Palestinian refugees, for example, was being dealt with in the framework of UNRWA and not in that of the Office of the High Commissioner for Refugees. Care must be taken to avoid oversimplifications or excessive generalizations, which would give the impression that the Committee wished to change existing instruments on refugees. The Committee must stay within the framework of the Convention and avoid moving onto dangerous ground.

52. Mr. CHIGOVERA said that the current wording of the end of paragraph 2 (b) implied a contrario that the refoulement and expulsion of refugees might take place on a discriminatory basis, and that was certainly not the Committee's intention. It would therefore be better to say that States parties were bound to ensure that there were no expulsions on a discriminatory basis.

53. Mr. AHMADU said that, when he had first considered the draft text, he had been thinking primarily of the problem of African refugees - with which h was familiar, as the administrator of an organization for African refugees i his own country, Nigeria - but he had not considered the issue of refugees i the context of UNRWA, for example. As it now stood, the text was acceptable even if it might be preferable to qualify the reference to the right to compensation in paragraph 2 (c). It was often very difficult to know who should be responsible for compensation.

54. Mr. de GOUTTES said that the Committee would do well to seek the opini of the Office of the High Commissioner for Refugees on the ambitious text under consideration, as Mr. van Boven had originally suggested.

55. Mr. WOLFRUM pointed out that Mr. Sherifis had consulted a representati of the Office of the High Commissioner for Refugees, who had expressed interest in the draft text and simply suggested that a reference should be made to the 1951 Convention relating to the Status of Refugees and that the principle of non-refoulement should be included. To provide a better link between paragraphs 1 and 2, as Mr. van Boven wished, the beginning of paragraph 2 might state that the Committee emphasized in that connection, et To meet Mr. Chigovera's concerns, paragraph 2 (b) should end after the reference to the principle of non-refoulement and non-expulsion of refugees and the reference to discrimination would be deleted. With regard to Mr. Ahmadu's suggestion that the reference to compensation in paragraph 2 (c should be qualified, he pointed out that the proposed text replicated the terms of the Dayton Peace Agreements.

56. Mr. YUTZIS commended Mr. Wolfrum, who excelled at the art of drafting texts that reinterpreted and updated the Convention in both letter and spiri With regard to paragraph 2 (b), he shared Mr. Chigovera's views. The text w ambiguous since it tended to set conditions for expulsion that would appear legitimize some forms of discrimination, and should be redrafted.

57. Mr. GARVALOV said that he was particularly interested in the refugee problem which his own country, Bulgaria, had experienced a few years earlier and whose consequences were still affecting it. The Committee could perfect well make a general recommendation on the subject and draw up a text that connected the problem of refugees and displaced persons to that of racial discrimination, since mention was being made of ethnic criteria.

58. Mr. van BOVEN expressed appreciation for the fact that the representative of the High Commissioner for Refugees had endorsed the draft text, which allayed some of his misgivings. In paragraph 2 (b), the referen to the fundamental principle of non-refoulement should probably be maintaine as the Office of the High Commissioner wished. On the other hand, the reference to article 1 of the Convention at the end of the subparagraph shou

be deleted, since, as Mr. Wolfrum had pointed out, the text was based on the Convention as a whole. He would prefer to speak of appropriate compensation in paragraph 2 (c), as that would weaken the text less than the amendment proposed by Mr. Ahmadu and still allow for some flexibility.

59. Mr. DIACONU said that the wording of paragraph 1 should be revised to avoid any confusion between the 1951 Convention relating to the Status of Refugees and the International Convention on the Elimination of All Forms of Racial Discrimination. The reference to non-military conflicts in the first preambular paragraph was unnecessary.

60. Mr. CHIGOVERA said that he was reluctant to accept the wording of paragraph 2 (b), for he still did not understand what was meant by the principle of non-refoulement and non-expulsion without discrimination.

61. Mr. WOLFRUM said that the necessary drafting changes would be made.

62. Mr. SHERIFIS said that he hoped that the Committee would be able to adopt the draft without a vote.

63. The draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria, as orally amended, was adopted.

The meeting rose at 6.05 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1176th MEETING PRINC

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft concluding observations concerning the periodic reports of the Republic of Korea, Bolivia, Malta and Brazil.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

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GE.96-17882 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations of the Committee concerning the eighth periodic report of the Republic of Korea (CERD/C/49/Misc.5)

Paragraph 2

1. Mr. AHMADU suggested that the phrase "frank discussion" in the last sentence should be replaced by "open discussion".

Paragraph 4

2. Mr. DIACONU (Country Rapporteur) proposed that the word "also" in the first sentence should be deleted.

Paragraph 6

3. Mr. GARVALOV said that the Government of the Republic of Korea had talked for many years about setting up a work permit system for illegal workers, but had not actually done anything. He accordingly suggested that the phrase "notes with interest" should be replaced by "notes".

Paragraph 9

4. Mr. AHMADU suggested that the phrase "translation into Korean" should be replaced by "translation into the Korean language".

Paragraph 12

5. Mr. CHIGOVERA said that paragraph 12 did not reflect his question to the delegation about the way in which the Convention might be directly invoked under domestic law. In his opinion, because of the way the Convention was worded it could not be directly invoked in any legal system.

6. Mr. de GOUTTES said that Mr. Chigovera's point should be duly reflected, since the extent to which the Convention could be directly invoked before the courts was still unclear.

7. The CHAIRMAN, speaking as a member of the Committee, suggested the following wording: "According to explanations given by the delegation of the Republic of Korea, individuals may invoke the provisions of the Convention in the courts, which can implement them directly on the same basis as domestic laws; the Committee nevertheless notes that the principle ...", continuing with the existing text.

8. Mr. GARVALOV said that paragraph 13 did not adequately reflect the concern he had expressed about the situation of ethnic Chinese people who had been born in Korea. For instance, since the principle of jus sanguinis was

still observed in that country, even ethnic Koreans had to provide proof of their Korean blood before they could obtain citizenship. Ethnic Chinese people were, by definition, excluded from citizenship.

9. The CHAIRMAN, speaking as a member of the Committee, suggested that the last sentence should be amended to read: "... for example, inability to obtain Korean citizenship and difficulty in obtaining employment ...".

Paragraph 15

10. The CHAIRMAN suggested that the phrase "the various rights set forth in article 5 of the Convention" should be changed to "the various rights listed in article 5 of the Convention", since article 5 did not establish rights, but merely described those which already existed.

Paragraph 17

11. Mr. CHIGOVERA proposed that the word "compulsory" should be replaced by "mandatory".

Paragraph 18

12. Mr. DIACONU (Country Rapporteur) proposed that the phrase "the obligations stemming from article 4" in paragraph 18 should be replaced by "the provisions of article 4".

13. Mr. CHIGOVERA proposed that "mandatory" should be used in place of "compulsory", as in paragraph 17.

Paragraph 19

14. Mr. CHIGOVERA queried the phrase "the State party should accord the Convention a status superior to that of domestic laws".

15. Mr. WOLFRUM said that, in his opinion, the Committee had no power to ask States parties to take such a step. The relationship between domestic and international law was generally laid down in the Constitution of the country concerned.

16. Mr. SHAHI said that, if a State had undertaken obligations under international law, it should not then seek to evade them by pleading that its constitution or domestic law took precedence over the international instrument concerned. In the Republic of Korea, domestic law could, under certain circumstances, take precedence over the Convention, as had been noted in paragraph 120.

17. Mr. DIACONU (Country Rapporteur) said that it was important to preserve the principle of the primacy of the Convention over domestic law. A State party adopted the Convention at a particular point in time, and it then took precedence over any existing legislation.

18. Following a discussion in which the CHAIRMAN, Mr. RECHETOV, Mr. WOLFRUM, Mr. DIACONU, Mr. FERRERO COSTA, Mr. GARVALOV, Mr. SHAHI and Mr. de GOUTTES

took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to delete paragraph 19.

19. It was so agreed.

20. Mr. DIACONU (Country Rapporteur) proposed that, if the Committee deleted paragraph 19, it should also delete the reference to lex posteriori in paragraph 12, which would then read: "According to explanations given by the delegation of the Republic of Korea, individuals may invoke the provisions of the Convention in the Courts, which can implement them directly on the same basis as domestic laws".

21. The CHAIRMAN, speaking as a member of the Committee, said that Mr. Diaconu's new version of paragraph 12 should be placed under the heading "Positive aspects", thus becoming new paragraph 10.

Paragraph 20

22. Mr. DIACONU (Country Rapporteur) suggested that the word "labour" should be deleted.

Paragraph 24

23. Mr. CHIGOVERA, supported by Mr. GARVALOV, suggested that the word "full" should be replaced by "comprehensive".

24. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations concerning the eighth periodic report of the Republic of Korea, with the amendments proposed during the discussion and subject to possible minor drafting changes.

25. It was so decided.

Draft concluding observations of the Committee concerning the eighth to thirteen periodic reports of Bolivia (CERD/C/49/Misc.14)

Paragraph 2

26. Mr. SHAHI, proposed that the paragraph should contain a reference to indigenous populations.

27. Mr. LECHUGA HEVIA, supported by Mr. SHAHI, proposed that the words "in which one third of the population is living" should be replaced by "principally affecting indigenous communities".

Paragraph 3

28. Mr. LECHUGA HEVIA (Country Rapporteur) proposed that "before the courts" should be deleted.

Paragraph 4

29. Mr. LECHUGA HEVIA, supported by Mr. SHAHI, proposed that the words "principally affecting members of indigenous populations" should be inserted after "extreme poverty".

30. The CHAIRMAN, following observations made by Mr. LECHUGA HEVIA and Mr. GARVALOV, suggested that the beginning of the paragraph should be reworded to read: "The protection of the indigenous population should be improved by the planned adoption of legal provisions ...".

Paragraph 14

31. Mr. LECHUGA HEVIA proposed that the reference to the Law on University Reform should be deleted. The text would then read: "With respect to article 7, which appears to be controversial ...".

Paragraph 19

32. The CHAIRMAN suggested that "further" should be deleted.

Paragraph 20

33. Mr. CHIGOVERA proposed that "new" should be replaced with "next".

Paragraph 21

34. The CHAIRMAN, following an observation by Mr. LECHUGA HEVIA, suggested that the text should be amended to read: "information on how the law on university reform and other related measures will affect minority students and communities" and that the rest of the paragraph be deleted.

Paragraph 22

35. Mr. GARVALOV, supported by Mr. LECHUGA HEVIA, Mr. de GOUTTES, and Mr. SHERIFIS, said that it was not right to refer to the United Nations Decade for Human Rights Education only in the case of Bolivia.

36. The CHAIRMAN suggested that the reference should be deleted.

37. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations on the eighth to thirteenth periodic reports of Bolivia, with the amendments proposed during the discussion and subject to possible minor drafting changes.

38. It was so decided.

Draft concluding observations concerning the eleventh and twelfth periodic reports of Malta (CERD/C/49/Misc.8)

39. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) introducing the draft, said that due to an error, which would be corrected in the final version, two paragraphs had been numbered eight.

Paragraph 2

40. Mr. VALENCIA RODRIGUEZ, in response to a query by Mr. Garvalov, said that the word "frank" could be deleted from the last sentence before the word "dialogue".

Paragraph 3

41. Mr. DIACONU suggested that the words "in its report" should be deleted, as the statement in question had been made orally, and that the beginning of the paragraph should read: "The fact that the representative of the State party states that it has been actively studying ...".

Paragraph 14

42. The CHAIRMAN pointed out that, in accordance with past practice, paragraph 14 should be included in the introduction.

43. Mr. VALENCIA RODRIGUEZ pointed out that in the Committee's previous report to the General Assembly it had kept the corresponding paragraph in the suggestions and recommendations section in the case of Croatia.

44. After a brief discussion in which the CHAIRMAN, Mr. SHERIFIS, Mr. van BOVEN and Mr. GARVALOV took part, the CHAIRMAN suggested that, for the sake of consistency, the Committee should keep to the agreement reached the previous year but, in view of the difference of opinion among members, it should reconsider the matter at its next session.

The meeting was suspended from 12.10 to 12.25 p.m.

Paragraph 7

45. Mr. VALENCIA RODRIGUEZ suggested that paragraph 7 should read:

> "7. The Committee is concerned that the Government of Malta, in its report, maintains its official position that it does not need to enact new ad hoc legislation to cover all forms of racial discrimination."

Paragraph 8

46. Mr. VALENCIA RODRIGUEZ suggested that the first sentence of the paragraph should read:

> "While the Committee acknowledges that certain provisions of existing legislation could be utilized to punish racial discrimination, it nevertheless concludes that the Government of Malta has not implemented article 4 of the Convention."

47. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft concluding observations on the eleventh and twelfth periodic reports of Malta, with the amendments proposed during the discussion and subject to possible minor drafting changes.

48. It was so decided.

Draft concluding observations on the tenth to thirteenth periodic reports of Brazil (CERD/C/49/Misc.9) (Document distributed in French only during the meeting)

49. The CHAIRMAN suggested that, as no English text was available, the Committee might go through the introductory paragraphs quickly and that Mr. de Gouttes should then read out the suggestions and recommendations section paragraph by paragraph so that English speakers could benefit from the interpretation, as had been done with other texts.

50. Mr. de GOUTTES (Country Rapporteur) said that the text had been revised to take into account the suggestions made by the Chairman, Mr. Diaconu, Mr. van Boven and Mr. Wolfrum. One phrase had been left in square brackets in paragraph 20 in response to Mr. Diaconu's reservations.

Paragraph 5

51. Mr. de GOUTTES explained that the paragraph had been inserted in response to a suggestion by Mr. van Boven who had drawn attention to the importance of the report by the Special Rapporteur, to which he himself had referred as Country Rapporteur, in his report on Brazil.

52. Mr. RECHETOV pointed out that, if the Committee made reference to the Special Rapporteur's report in connection with Brazil, it would have to refer to other similar reports in the future, for the sake of consistency. In the case of Brazil, the reference could be omitted as the report in question had been done for another body and passed on to the Committee for information purposes only.

53. Mr. WOLFRUM endorsed that view. From the Committee's point of view the report had not been satisfactory, in that it placed very little emphasis on the status and rights of indigenous populations. The paragraph should preferably be deleted, but as a compromise the report might simply be noted.

54. Mr. GARVALOV said he shared the view of the two previous speakers, as a matter of principle. Since the Special Rapporteur's mission had had practically no connection with the Committee's work or its dialogue with the State party, the paragraph should be deleted.

55. Mr. SHERIFIS shared the reservations expressed by previous speakers. His position, as put to the Special Rapporteur, was that the latter should, as a matter of priority, visit States Members of the United Nations that were not States parties to the Convention, since the Committee had no opportunity for dialogue with such States.

56. Mr. van BOVEN said he had suggested including the reference because he had found the Special Rapporteur's report interesting and more illuminating on the situation in Brazil than some of the other information available to the Committee. Furthermore, disappointed though he was that the Committee's interest in the Special Rapporteur's work had apparently not been reciprocated, he had wished to impress on the Special Rapporteur that the

Committee was working towards the same goals and was appreciative of his work. He would defer to the majority opinion if members considered that the reference was out of place, but believed that the wider issue of the Committee's relations with the Special Rapporteur warranted further discussion.

57. Mr. AHMADU said he was in favour of deleting the reference to the Special Rapporteur and his report. He, too, had taken the position that the Special Rapporteur should concern himself with countries which had not ratified the Convention, an example being Benin. Time permitting, the Special Rapporteur could perhaps be invited to discuss his report further with the Committee.

58. Mr. YUTZIS said that the issue was one of substance. At a time when the world was witnessing the growth of new forms of racism and xenophobia, it was politically useful to make a statement recognizing the complementarity between the functions of the Special Rapporteur and the Committee. A minimum expression of such recognition might be for the Committee to "take note" of the Special Rapporteur's report as being complementary to the Committee's work.

59. Mr. SHERIFIS said that the Committee should not take note of a report that had not been addressed to it; he was more than ever convinced of the need to delete the whole reference.

60. Mr. de GOUTTES pointed out that references to the Special Rapporteur's report would appear in the summary record of the Committee's discussion of the country report. While there did not seem to be a consensus in favour of including a specific reference in the concluding observations, that should not prevent the Committee from making suggestions or recommendations for action by the Special Rapporteur in the future, should it deem that the situation in any particular country so warranted.

61. Mr. van BOVEN observed that liaison had been established with other organs both within and outside the United Nations in order to broaden the Committee's access to sources of information. He advocated flexibility in using and referring to such sources. That was the message he had wished to convey to the Special Rapporteur and he hoped that the latter, too, would make use of the Committee's own documents and findings.

62. Mr. YUTZIS said that, although Brazil was not the only country concerned, the Committee's recognition of the value of the work done by other bodies concerned with racial discrimination was strategically important and overdue.

63. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to delete paragraph 5.

64. It was so decided.

Paragraph 10

65. Mr. VALENCIO RODRIGUEZ said that paragraph 10 seemed to suggest that the Committee was opting in favour of integration of the vulnerable groups

mentioned into the majority population. The Committee should state clearly whether it was in favour of integration or whether it considered those groups to be entitled to defend their own rights.

66. Mr. de GOUTTES suggested that, while he had no difficulty with the concept of indicators of "non-integration", a compromise solution might be to replace those words by "particular social difficulties faced by".

Paragraphs 12 and 13

67. Mr. DIACONU pointed out that paragraph 13 referred only to indigenous populations, whereas paragraph 12 also mentioned several other vulnerable groups, which fell within the mandate of other United Nations bodies. He therefore proposed that paragraph 12 should refer only to indigenous populations.

68. The CHAIRMAN suggested that that point should be resumed at the following meeting.

The meeting rose at 1 p.m.

UNITED
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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1177th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 August 1996, at 3 p.m.

Chairman: Mr. Banton

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft conclusions of the Committee concerning Brazil

Draft conclusions of the Committee concerning India

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17945 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft conclusions of the Committee concerning the tenth to thirteenth periodic reports of Brazil (continued) (CERD/C/49/Misc.9, document distributed in the meeting in French only)

1. The CHAIRMAN reminded members that the Committee had, at its 1176th meeting, already adopted the first 11 paragraphs of the draft conclusions prepared by Mr. de Gouttes, the Rapporteur for Brazil. He invited members to continue consideration of the draft conclusions.

Paragraph 12

2. After an exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil), Mr. DIACONU, the CHAIRMAN, speaking in his personal capacity, and Mrs. SADIER (Secretariat) took part, it was decided to replace the term "autochtones" by "indigènes" in paragraphs 9, 10, 11, 15, 18, 20 and 21 of the French version of the draft conclusions to reflect more closely the terminology used in Brazil.

3. After a further exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil) and Mr. DIACONU took part, the following wording was adopted for paragraph 12: "Special concern is expressed about the fate of the most vulnerable populations, especially the indigenous, black and mestizo populations."

Paragraph 14

4. After an exchange of views in which Mr. de GOUTTES (Rapporteur for Brazil), Mr. WOLFRUM and MR. DIACONU took part, the following wording was adopted for paragraph 14: "The fact that an illiterate citizen belonging to the indigenous, black or mestizo populations or to other vulnerable groups cannot be elected in political elections is contrary to article 5 (c) of the Convention."

Paragraph 17

5. Replying to a question by Mr. Wolfrum, Mr. de GOUTTES (Rapporteur for Brazil) said that, in its periodic report, Brazil did in fact refer to ongoing programmes.

Paragraph 18

6. Mr. VALENCIA RODRIGUEZ suggested that the wording might be amended by deleting the words "in integrating" from the first sentence.

7. Mr. de GOUTTES (Rapporteur for Brazil) proposed reverting to the earlier wording by replacing "difficulties" by "social difficulties encountered by the black, indigenous and mestizo populations", and leaving the rest of the paragraph unchanged.

Paragraph 20

8. Mr. de GOUTTES (Rapporteur for Brazil) said that the words underlined and in square brackets reflected a reservation by Mr. Diaconu.

9. Mr. DIACONU, supported by Mr. RECHETOV, proposed that, to take account of the scope of the Convention, the words "peasants ... magistrates" after the word "people" should be deleted and replaced by "as well as other ethnic groups".

10. Mr. WOLFRUM said that, while associating himself with the view expressed by Mr. Diaconu, he would prefer the wording "as well as other underprivileged groups".

11. Mr. YUTZIS proposed that "show" in the second line should be replaced by "put into practice". While he shared the view expressed by Mr. Diaconu, he would prefer the wording "as well as other vulnerable groups".

12. Mr. AHMADU said that, in the case of a country such as Brazil, mention should be made of blacks, as well as of indigenous peoples.

13. Mr. de GOUTTES (Rapporteur for Brazil) read out the first sentence of paragraph 20 with the amendments proposed by previous speakers, as follows: "The Committee recommends that the Government of Brazil should more vigorously put into practice its determination to defend the fundamental rights of indigenous people, blacks and other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death." The rest of the paragraph would remain unchanged.

Paragraph 21

14. Mr. DIACONU proposed that, in the second sentence, the words "for this purpose" should be inserted before "where land disputes" and "peasants" should be deleted as they represented an economic rather than an ethnic group.

Paragraph 22

15. Mr. GARVALOV asked whether all States parties with significant indigenous populations had been similarly encouraged to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

16. Mr. RECHETOV, supported by Mr. SHERIFIS, said that a similar recommendation should be included in the Committee's conclusions concerning all countries with indigenous or tribal peoples.

17. Mr. van BOVEN said that the question of ratifying ILO Convention No. 169 should be dealt with on a case by case basis, as there were countries, including his own, which did not have indigenous populations but had nevertheless ratified the Convention because of its implications for their relations with countries in which there were indigenous populations.

18. Mr. GARVALOV, referring to paragraph 2 of the conclusions, recalled that during the Committee's discussions on Brazil, a number of members had drawn attention to the very frank nature of the report and the courage shown by the State party in admitting mistakes before the Committee. He would have expected the conclusions to accord greater recognition to that frankness and courage.

19. Mr. de GOUTTES (Rapporteur for Brazil), associating himself with the view expressed by Mr. Garvalov, proposed that the beginning of paragraph 2 should be amended by ending the first sentence at the word "break" and wording the second sentence as follows: "It expresses its satisfaction to the State party for the frankness of its report and of the explanations given by its delegation." The rest of the paragraph would remain unchanged.

20. The Committee's draft conclusions concerning the tenth to thirteenth periodic reports of Brazil, as a whole, were adopted, as orally amended.

Draft conclusions of the Committee concerning the tenth to fourteeth periodic reports of India (CERD/C/49/Misc.6, document distributed in the meeting in English only)

21. Mr. RECHETOV (Rapporteur for India) said that the document before the Committee (CERD/C/49/Misc.6) was based on a document prepared by the secretariat into which he had incorporated comments and proposals made by many members of the Committee. Some, which he considered not to represent the general view of the Committee, may have been omitted.

22. The CHAIRMAN invited members to consider the draft conclusions concerning India.

Paragraph 2

23. Mr. DIACONU proposed ending the third sentence with the words "the Convention in practice".

24. He also noted that the tenor of the sentence thus abbreviated, namely that the report did not provide concrete information on the implementation of the Convention in practice, indicated sufficiently clearly that the obligation under article 9 had not been complied with, so that there was no need to dwell further on the State party's compliance with its obligations under article 9 in the introduction to the conclusions.

25. Mr. RECHETOV (Rapporteur for India) associated himself with the view expressed by Mr. Diaconu.

Paragraphs 3 and 4

26. Mr. WOLFRUM said that these two paragraphs belonged in section D "Principal subjects of concern", rather than in section A "Introduction".

27. The CHAIRMAN said that the Committee would consider the paragraphs when it took up section D of the conclusions.

Paragraph 6

28. Mr. GARVALOV said that, in the light of the Committee's mandate, the reference to the extreme poverty of the population had no place in the draft report. The provisions of the Convention applied only to situations where there was discrimination against certain ethnic groups.

29. Mr. WOLFRUM noted that paragraph 6 appeared in the section of the draft report entitled "Factors and difficulties impeding the implementation of the Convention". Poverty was referred to simply as one of those factors.

30. Mr. RECHETOV (Rapporteur for India) proposed that the problem might be overcome by referring to the extreme poverty of certain population groups.

31. Mr. SHAHI said that the Committee should be careful to choose more objective wordings. By mentioning only the climate of violence and terrorism, it was siding with India and disregarding the fact that thousands of persons had been killed or had disappeared in Kashmir. He proposed that, in the interest of fairness, the words "and repression" should be inserted between "terrorism" and "in certain parts of the country" and that the last part of the sentence should be replaced by "are not conducive to the full implementation of the Convention in all the areas administered by the State party". The text as it stood suggested that the Committee regarded Kashmir as part of India.

32. Mr. CHIGOVERA said that, while he quite understood Mr. Shahi's concerns, it was not for the Committee to define the frontiers of States parties. Questions of self-determination did not fall within its purview.

33. Mr. DIACONU said that he fully shared Mr. Chigovera's position. Moreover, paragraph 6 dealt with factors impeding the implementation of the Convention and not with violations of it, which were taken up in another section of the draft report. Although repression could constitute a violation of the Convention, it was not a factor impeding its implementation.

34. The CHAIRMAN suggested that, as a compromise, the words "in the State party" could be deleted, so that the paragraph would end with the word "Convention".

35. Mr. WOLFRUM said that he could accept that proposal, although it dealt with only part of the problem. He understood why Mr. Shahi wished to insert the words "and repression" after the word "terrorism", the idea being that India might react to violence with repression. As a compromise, the words "and repression" could be inserted as proposed by Mr. Shahi and the paragraph could end as suggested by the Chairman.

36. Mr. SHAHI supported Mr. Wolfrum's proposal.

37. Mr. RECHETOV (Rapporteur for India) said that it was the State party which implemented the Convention. Failing to mention the fact would not resolve the problem. Moreover, the question would come up again in the following paragraphs.

38. Mr. DIACONU proposed that the words "by the State party" should be used.

39. Mr. SHAHI said that the problem remained. The Committee, which had been very strict during consideration of the reports concerning China and the Russian Federation, was unfortunately not showing the same concern for even-handedness in the case of India. As it stood, paragraph 6 suggested that the Committee regarded any action in Kashmir as terrorism. If the Committee wished to adopt the draft report rapidly, without its members having an opportunity to express their thoughts, it could simply take a vote.

40. Mr. GARVALOV said that he agreed with Mr. Shahi that members of the Committee should have an opportunity to consider the document in detail.

41. Mr. van BOVEN said that he could not subscribe to amendments which cast doubt on the sovereignty of a State party. However, he fully agreed with Mr. Shahi there were deficiencies in the wording of the draft report.

42. Mr. LECHUGA said that one solution might be to refer only to the climate of violence in some parts of the country, without mentioning terrorism.

43. After an exchange of views in which Mr. YUTZIS, Mr. AHMADU and Mr. SHERIFIS took part, the CHAIRMAN said that, if he heard no objection, he would take it that members of the Committee wished the second sentence of paragraph 6 of the draft report to read as follows: "It is also noted that the extreme poverty of certain groups of the population, the system of castes and the climate of violence in certain parts of the country are among the factors that impede the full implementation of the Convention by the State party."

44. It was so decided.

Paragraph 8

45. Mr. YUTZIS said that, as it stood, paragraph 8 finished on a negative note, whereas the section in which it appeared concerned positive aspects. The matter could be dealt with by simply placing the second part of the paragraph, beginning "although it is regretted" at the beginning of the paragraph.

46. Mr. WOLFRUM said that he had the same concern as Mr. Yutzis, but wished to propose a different solution. The paragraph consisted of three parts. The first, from "The demographic data" to "are welcomed" and the last, from "and the data" to the end of the paragraph, should remain where they were. The second part, from "although it is regretted" to "in proportion to their size", however, should be inserted in the section of the report entitled "Principal subjects of concern".

Paragraph 9

47. Mr. WOLFRUM proposed that the sentence beginning "It is regretted" should be moved to paragraph 13, as had been done in other instances.

Paragraph 10

48. The CHAIRMAN said that, in the last sentence, the reference should be to article 2.1 of the Convention.

Paragraph 11

49. Mr. YUTZIS noted that, as in the two preceding paragraphs, this paragraph contained a sentence beginning "Regrets that". He proposed that it should be inserted in the section entitled "Principal subjects of concern".

50. Mr. SHAHI said that the paragraph referred only to the northeastern part of the country, and that Jammu and Kashmir should also have been mentioned. Moreover, the words "considered to be characterized by civil disturbances by the central authorities" should be deleted, as it expressed the position of the Indian Government.

51. Mr. CHIGOVERA said that, if the intention was to cast doubt on India's sovereignty, he would find it very difficult to accept Mr. Shahi's proposal.

52. Mr. DIACONU said that, by adding the reference to Jammu and Kashmir, the Committee would be acting as if the Terrorist and Disruptive Activities (Prevention) Act had been abrogated in that province also, which was not at all the case.

53. Mr. SHAHI was insistent that reference should be made to the abrogation of the Terrorist and Disruptive Activities (Prevention) Act, which was also applied in Jammu and Kashmir. The Indian authorities had in fact themselves recognized that the implementation of the Act had given rise to abuses in various States.

54. Following an exchange of views in which Mr. GARVALOV, Mr. CHIGOVERA, Mr. DIACONU, Mr. RECHETOV (Rapporteur for India), Mr. SHERIFIS and Mr. WOLFRUM took part, and in the light of the proposals made, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the following text for paragraph 11: "The abrogation of the Terrorist and Disruptive Activities (Prevention) Act, which applied to parts of the northeastern part of the country and to Jammu and Kashmir, is welcomed. In those parts, the right to personal security of some members of ethnic and religious minorities was often reported to be violated by security forces. The Committee regrets that a Criminal Law Amendment Bill containing many provisions of TADA has been proposed". The reference to the National Security Act and, in Jammu and Kashmir, the Public Safety Act remaining in force would be moved to paragraph 19.

55. It was so decided.

56. The CHAIRMAN invited the Committee to consider paragraphs 3 and 4 of the draft, which would be inserted in section D, before the current paragraph 13.

Paragraph 3

57. Mr. WOLFRUM said that the beginning of the paragraph should be amended to read: "... of the report and reiterated in the oral presentation, ...". The words "wishes to state that" would be replaced by "states that" and in the second sentence, the word "Believes" would be replaced by "Affirms". The following sentence would also be added: "The Committee has emphasized its grave concern that during the discussion of the report there was no inclination on the side of the State party to reconsider its position."

58. Mr. de GOUTTES said that paragraph 3 could be inserted before paragraph 13, provided that the following sentence was added to paragraph 2 of the introduction: "It also regrets that the report and the delegation continue to assert that the situation of scheduled castes and tribes does not fall within the scope of the Convention."

59. Mr. FERRERO COSTA supported the amendment proposed by Mr. de Gouttes, which would enable the report to reflect an essential aspect of the debate.

60. Mr. van BOVEN said that he also supported the amendment proposed by Mr. de Gouttes, which should, however, read "... the report and the delegation assert that the situation ...". He had already had occasion to point out that the position of the Indian authorities on the question seemed regressive.

61. Mr. GARVALOV said that reference should be made in the paragraph not only to the population of Jammu and Kashmir, but also to members of other ethnic groups. Only one reference was made to the untouchables, for example, in the text under consideration, in paragraph 18.

62. The CHAIRMAN said that the text had been prepared bearing in mind the fact that objections could be raised on the grounds that the conflict in Jammu and Kashmir was of a political and religious nature and therefore did not fall within the scope of the Convention.

63. Following a discussion in which Mr. AHMADU, Mr. SHAHI, Mr. DIACONU, Mr. van BOVEN, Mr. de GOUTTES, Mr. YUTZIS, Mr. RECHETOV and Mr. GARVALOV took part, as to whether the Committee - being fully informed of the situation - should refer to reports and state that they were reliable, the CHAIRMAN suggested that the Committee should express its grave concern about the fact that the Kashmiris and other ethnic groups were, because of their ethnic origin, often treated in a manner contrary to the provisions of the Convention. He also suggested that the paragraph should be placed in the beginning of section D, before the current paragraph 13 of the conclusions.

64. It was so decided.

Paragraph 13

65. Mr. SHAHI said that the paragraph should include a sentence stating that the Committee deplored the fact that the Human Rights Commission had been unable to consider cases of human rights violations which had occurred more than a year before the complaint was filed.

66. Mr. YUTZIS said that the word "may" was too weak, since the restriction of the powers of the Human Rights Commission actually did contribute to the impunity of the armed forces, and the force of that observation should not be reduced.

67. The CHAIRMAN supported deleting the word "may".

68. It was so decided.

Paragraph 14

69. Mr. WOLFRUM proposed adding to the paragraph a sentence stating that, as a result, it was impossible to determine whether the two commissions mentioned had a positive effect on the enjoyment of human rights and fundamental freedoms by members of the scheduled castes and tribes or minorities.

70. Mr. GARVALOV said that the two sentences could be combined.

71. Mr. AHMADU said that the paragraph should state that there was an absence of information, rather than just a lack of information.

Paragraph 16

72. Mr. FERRERO COSTA said that, as it stood, the paragraph seemed somewhat contradictory in that it began by expressing satisfaction and finished with regrets. Would it not be better to highlight the regrets?

73. The CHAIRMAN suggested recasting the sentence to state clearly that the Committee regretted the lack of concrete information on the legal provisions prohibiting racist organizations and on the application of those provisions in practice, including eventual court decisions.

74. Mr. SHAHI requested that a sentence should be added to the effect that the lack of information was particularly serious in view of the reports of widespread violence against certain minorities, violence which was actively encouraged by certain extremist organizations which had not been declared illegal.

75. Mr. GARVALOV said that the Committee's satisfaction that article 4 of the Convention was starting to be implemented should be expressed in a separate paragraph in part C of the conclusions.

76. The CHAIRMAN noted that the proposal seemed to meet with the approval of members and assured the Committee that it would be reflected in the final version of the conclusions.

Paragraph 17

77. Mr. FERRERO COSTA said that there was some inconsistency between paragraphs 17 and 24. If the Committee did not have information enabling it to evaluate the implementation of article 5 of the Convention, how could it recommend that the State party should continue its efforts in that direction?

78. Mr. SHAHI recalled that the representative of India had stated that the reason why the question of economic, social and cultural rights was not dealt with in specific texts was that it did not fall within the scope of the Directive Principles of State Policy concerning those rights. Moreover, it should not be concluded that the lack of information on the enjoyment of economic, social and cultural rights made it difficult to evaluate the implementation of the other provisions of article 5 of the Convention.

79. Mr. DIACONU said that, in fact, it was not information on the implementation of the Convention that was lacking, but simply information which would shed light on the implementation of the Directive Principles of State Policy. Civil and political rights were dealt with in paragraph 19 of the conclusions. He suggested that the Committee should point out that the lack of information made its task more difficult, rather than difficult in th absolute.

80. In the light of observations and proposals made by Mr. van BOVEN, Mr. CHIGOVERA and Mr. YUTZIS, the CHAIRMAN proposed that the Committee shoul state in paragraph 17 that the lack of information on the texts of the Directive Principles of State Policy of the Constitution relating to the promotion of social, economic and cultural rights and on the measures to put them into effect, made any evaluation of the implementation of article 5 of the Convention more difficult.

81. It was so decided.

Paragraph 18

82. The CHAIRMAN, recapitulating observations made by Mr. CHIGOVERA, Mr. YUTZIS and Mr. WOLFRUM, suggested that the reference to the Civil Rights Act (1985) and the word "alleging" in the seventh line of the English text, which weakened the Committee's statement, should be deleted from the final version of paragraph 18. However, the paragraph should state that the practices described in the last sentence constituted a violation of article 5 (f) of the Convention.

83. It was so decided.

Paragraph 19

84. Mr. WOLFRUM said that he was bothered by a certain ambiguity in the wording of the paragraph which could be taken as suggesting that efforts to establish equality in the exercise of political rights had inevitably led to violence.

85. Mr. RECHETOV (Rapporteur for India) disputed the validity of that interpretation as the paragraph was intended merely to draw attention to a situation in which conflicts between groups occurred under the pretext of equal rights. He agreed, however, that the wording of the paragraph could b improved.

86. Mr. AHMADU said that the Committee should express its concern more clearly and refer to the whole of article 5 of the Convention.

87. Mr. DIACONU said that only article 5 (c) concerned political rights, which were precisely the subject of the paragraph in question. In his view, the fact that there had been a problem meant that there had been discrimination, a practice which should be condemned in itself, over and above any adverse consequences. The Committee should therefore express its concern about such discrimination.

88. Mr. SHAHI said that article 5 (c) dealt in particular with the right to participate in elections. However, the whole problem in Kashmir was that elections there were fraudulent. Two months earlier, for example, the population had voted at gunpoint. As it stood, the paragraph was too vague. The Committee should state that the denial of the right to the equal exercise of the political rights embodied in article 5 of the Convention had in the past led to renewed outbreaks of violence, particularly in Jammu and Kashmir.

89. Mr. van BOVEN said that, since the situation had not changed, no reference should be made to the past.

90. The CHAIRMAN took note of Mr. van Boven's observation and observed that the Committee was agreed on the first sentence of paragraph 19. Consideration of the draft conclusions would resume at the following meeting with a discussion of aspects of paragraph 11 and other particulars which might be added to it.

The meeting rose at 6 p.m.

UNITED NATIONS

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International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1178th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (continued)

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GE.96-17941 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the tenth to fourteenth periodic reports of India (CERD/C/49/Misc.6) (continued)

Paragraph 19

1. Mr. WOLFRUM said that the Committee should not be discriminatory in its references to regions of India. The tone of the draft concluding observations had been toughened. However, the Committee should also try to stress the positive aspects of its dialogue with representatives of the State party, such as the plurality of the mass media and their role in defending human rights.

2. The CHAIRMAN, in response to a comment made by Mr. RECHETOV, suggested that paragraph 19 should refer simply to "an increase of violence".

3. Mr SHAHI said he understood that the Committee had agreed to move the references to the National Security Act and, in Jammu and Kashmir, to the Public Safety Act from paragraph 11 to paragraph 19.

4. The CHAIRMAN suggested that a subparagraph could be inserted after paragraph 19 which would refer to the limited powers of the National Commission on Human Rights to investigate violence, followed by a new paragraph to the effect that the Committee regretted that the National Security Act and, in Jammu and Kashmir, the Public Safety Act remained in force, and that a Criminal Law Amendment Bill containing many of the provisions of the Terrorist and Disruptive Activities (Prevention) Act was in preparation.

5. Mr. CHIGOVERA pointed out that the draft concluding observations made frequent reference to Jammu and Kashmir, although in the dialogue between the Committee and representatives of India, there had been no such emphasis. The reference to Jammu and Kashmir should therefore be deleted. Also, was the Committee sure that the Criminal Law Amendment Bill contained many of the provisions of the Terrorist and Disruptive Activities (Prevention) Act? If not, that reference should also be removed.

6. Mr. DIACONU expressed concern that, if paragraph 19 referred just to Jammu and Kashmir, the Committee would come under attack for political reasons. The Committee should, therefore, use the words "in some areas of India" in paragraph 19 and throughout its draft concluding observations on India.

7. Mr. SHAHI agreed that more information on the Criminal Law Amendment Bill was needed. The draft concluding observations should refer to Jammu and Kashmir because the scale of the repression taking place rendered the situation there unlike anywhere else in the country.

8. The CHAIRMAN said that the Committee believed that it could have a positive influence on Governments. Any comments that could be construed as an attack would undermine that influence. The new paragraph might therefore read: "The Committee is concerned that the National Security Act and, in some areas of India, the Public Safety Act, remain in force and that a Criminal Law Amendment Bill currently in preparation may include certain of the provisions of the Terrorist and Disruptive Activities (Prevention) Act".

9. Mr. SHAHI said that nowhere else in India had 40,000 people been killed or were there 90,000 people missing. The Committee's attempts at an even-handed approach were misguided. The reference to one particular area was not condemnation but an expression of concern.

10. Mr. GARVALOV said that, during consideration of the report of India, the Committee had concentrated on the situation of the untouchables. However, they were referred to only once in the draft concluding observations. Moreover, if the Committee opted for a more general reference to "other areas of India", the same approach should be taken with regard to other States parties.

11. Mr. CHIGOVERA, supported by Mr. de GOUTTES, expressed concern that matters that were being put forward for inclusion in the draft concluding observations had not been taken up with the representatives of India. It would be improper to use information that had not been discussed with the State party.

12. Mr. DIACONU, supported by Mr. de GOUTTES, suggested that the Committee defer its consideration of the draft concluding observations on India and take time to look again at the records of the discussion with representatives of India and the proposed text.

13. Mr. SHAHI agreed that the Committee should defer its decision on the draft concluding observations. If it agreed that only information discussed with the representatives of India could be included, that approach would have to be applied to all States parties.

Paragraph 20

14. Mr. CHIGOVERA said that as he understood it, the courts in India could award damages to victims of human rights violations.

15. Mr. SHAHI, supported by Mr. WOLFRUM, said that under the Convention, States parties had to provide, in law, for recourse to the courts in the case of human rights violations. It should not merely be left to the discretion of the courts whether to admit a case or not.

16. Mr. RECHETOV proposed that the text should note that the Supreme Court had in some cases reaffirmed the principle of awarding compensation.

17. Mr. CHIGOVERA proposed that the paragraph should read: "Although it is noted that the Indian courts have jurisdiction to award compensation in

matters of human rights violations, including violations of the rights und the Convention, there is no specific Statute in India which provides for compensation for victims of human rights violations ...".

Paragraph 21

18. Mr. SHAHI suggested that the paragraph should include the amendment adopted earlier for paragraph 13, recommending that the National Human Rig Commission should also be allowed to consider violations by the armed forc which had occurred more than one year previously. Although the representa of India had stated that the Commission already had such powers, an offici document on the functions of that body proved otherwise.

Paragraph 24

19. Mr. CHIGOVERA pointed out that, as article 5 of the Convention did n create any rights, the word "enshrined" was inappropriate and should be replaced by "provided for".

20. Mr. van BOVEN proposed that the paragraph should become the first paragraph in the suggestions and recommendations section.

Paragraph 25

21. Mr. GARVALOV proposed that paragraph 25 should also be moved to the suggestions and recommendations section.

Paragraph 26

22. Mr. RECHETOV, in response to a point made by Mr. GARVALOV, suggested the word "entire" should be deleted and the word "reform" in the last sent be replaced by "eradicate".

23. Mr. van BOVEN said that the notion in the last sentence would be bet expressed by the existing wording.

Paragraph 27

24. Mr. WOLFRUM, supported by Mr. DIACONU, said that the paragraph shoul refer to the civil disturbances in Nagaland, as well as in Jammu and Kashm

25. Mr. SHAHI said that the paragraph was highly controversial and shoul be deleted in its entirety. The information on the recent elections give the representative of India, which was to be found in paragraph 48 of document CERD/C/SR.1162, differed greatly from the accounts given in the world's press. In addition, the South Asia Human Rights Documentation Ce had reported the extension to the entire north-east of the Armed Forces Special Powers Act which had been passed in 1956 to suppress the aspirati of the Nagas. The paragraph, if retained, would give the impression that Committee was endorsing India's statement that Jammu and Kashmir was an integral part of India.

26. Mr. DIACONU agreed that the paragraph should be deleted.

27. Mr. WOLFRUM said that he was opposed to the deletion and undertook to draft an unbiased text relating to article 5 (c) of the Convention for consideration the following day.

28. Mr. SHAHI pointed out that article 5 (c) could not be said to apply to elections in a State whose total area had been disputed since independence.

Paragraph 28

29. The CHAIRMAN suggested that the word "should" be inserted before "adopt".

Paragraph 29

30. After a brief discussion in which Mr. SHERIFIS, Mr. RECHETOV, Mr. GARVALOV and Mrs. SADIQ ALI took part, the CHAIRMAN suggested that the paragraph should read: "The Committee suggests that the State party ensure wide publicity, possibly in the most commonly spoken languages, for its tenth to fourteenth reports and the concluding observations."

Paragraph 30

31. Mr. SHERIFIS proposed that the words "at its earliest convenience" be inserted after "ratify" and that the formula be used in all concluding observations in the future.

32. Mr. YUTZIS, stressing the complementarity of the work of the Committee and that of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, proposed that a new paragraph be inserted after paragraph 30 recommending that any visit to India by the Special Rapporteur should be used to help the Committee to gain a better understanding of the situation in that country.

Draft concluding observations concerning the fifth to seventh periodic reports of China (CERD/C/49/Misc.13)

33. Mr. WOLFRUM stressed his regret that the Committee's highly constructive and encouraging dialogue with the delegation of China had been curtailed by time constraints, leaving some questions open and hence inadequately reflected in the Committee's concluding observations.

Paragraph 1

34. Mr. RECHETOV proposed that "little data" should be replaced by "insufficient data" in the second sentence.

Paragraph 7

35. Mr. SHERIFIS suggested that, for the sake of consistency with other paragraphs under Section C, the sentence should begin: "It is noted with appreciation that ...".

36. Mr. WOLFRUM explained that the sentence was so phrased, without any word of appreciation, because very little written information had been provided on the laws in question and none at all on implementation, thus precluding any proper assessment by the Committee.

37. Mr. GARVALOV said that the information provided had been encouraging - a point he had made during the discussion - and he would have preferred some wording to that effect.

38. After an exchange of views in which Mr. SHERIFIS, Mr. DIACONU, Mr. GARVALOV and Mr. de GOUTTES took part, the CHAIRMAN said that it appeared to be preferable to retain the original wording.

Paragraph 9

39. Mr. AHMADU proposed that "lack of information" should be replaced by "absence of information".

40. In response to a question by Mr. GARVALOV, the CHAIRMAN suggested deleting the word "their" and placing an apostrophe after "minorities" in the second sentence.

41. Mr. RECHETOV said that, under the Convention, the Committee could not properly call for protective legal provisions for undefined minority groups. He suggested that the wording be amended to read: "The lack of information regarding legal status for minority groups that are scattered throughout China and their enjoyment of rights as enumerated in the Convention is noted with regret."

42. Mr. WOLFRUM pointed out that the content of paragraph 9 was based on China's report itself, which referred to a law on that issue that was under consideration but the enactment of which had been delayed.

43. The CHAIRMAN said in reply to a suggestion by Mr. AHMADU that "scattered" had been the word used in China's report. He took it that the Committee wished to retain the paragraph as it stood, subject to the minor drafting change in the second sentence.

Paragraph 11

44. Mr. YUTZIS observed that the second sentence, expressed in the conditional tense, was contradictory to the first, rendering the paragraph incomprehensible. The Committee could express concern or regret only if it had ascertained that the situation reported in the first sentence had in fact resulted in undue changes in the demographic composition of a region.

45. Mr. FERRERO COSTA, supported by Mr. YUTZIS, said that the second sentence detracted from the validity of the first. The problem, which was a substantive one, might be resolved by deleting the first part of the second sentence and continuing the first sentence, after "minority areas", with the words "which could result in any changes ...".

46. Mr. GARVALOV said he was in favour of deleting the second sentence, since the Committee could not speculate on what might happen in the future.

47. The CHAIRMAN said that the Committee had had some information to the effect that the situation had resulted in some demographic changes.

48. Mr. RECHETOV, after calling for consistency in the Committee's approach to texts of concluding observations, specifically when it came to making drafting changes in plenary, agreed that the issue raised in paragraph 11 was one of substance. Demographic changes were occurring throughout the world, and the Committee needed to take account of the impact of any such changes.

49. Mr. CHIGOVERA suggested that Mr. Ferrero Costa's amendment might be reworded slightly to read: "as this may result in changes in the demographic composition of an autonomous region".

50. Mr. SHERIFIS objected in principle to the reference to "minority areas", since they were areas within the borders of a country and the Committee's expression of concern suggested that it was encouraging segregation or ghettos. "Minority areas" should therefore be replaced by "autonomous regions".

51. Mr. DIACONU agreed that the text should refer to "autonomous regions" rather than "minority areas". He also took Mr. Rechetov's point that demographic change was not in itself a bad thing. The present wording of the paragraph would also apply to a case where a State gave doctors, teachers or engineers a financial incentive to encourage them to work in underdeveloped areas, which would actually be a commendable policy. He accordingly suggested the wording "substantial changes in demographic composition".

52. Mr. YUTZIS said that the Committee's current difficulties only showed how important it was to discuss the issues fully with the State party. The State party's representative had mentioned the question of incentives for Han settlers, but there had not been time to discuss the matter fully.

53. Mr. GARVALOV said that an influx of Han settlers into the autonomous regions would not be a problem unless there were so many of them that they usurped the functions of local government.

54. After a discussion in which Mr. WOLFRUM, Mr. GARVALOV and Mr. van BOVEN took part, the CHAIRMAN, speaking as a member of the Committee, proposed the following wording for the end of the paragraph "... as this may result in substantial changes in the demographic composition of those regions and in the character of the local society".

Paragraph 12

55. Mr. AHMADU suggested the following wording: "It is regretted that little information was provided on the distinctive religions of several minority nationalities. Concern is expressed with regard to actual enjoyment of the right to freedom of religion, particularly in the Muslim parts of Xinjiang and in Tibet. Note is taken with concern of the reported destruction by the State of mosques, Buddhist and Lama temples and other places of worship of the

minority nationalities. Deep concern is expressed for the reported restrictions placed on the exercise of religious rights of the members of the ethnic groups."

56. Mr. RECHETOV said that he personally had no objective information about any destruction of places of worship by the Chinese Government. Accordingly, he could not support the paragraph as it stood.

57. Mr. WOLFRUM (Country Rapporteur) said that he had referred to the issue and that Mr. Ahmadu's suggested wording was therefore accurate.

58. The CHAIRMAN said that it was important to retain the first phrase of the original paragraph, which explained why the Committee was concerning itself with religious matters.

59. Mr. GARVALOV said that he had objected to the inclusion of references to unproven allegations in the concluding observations. He was also doubtful about the reference to the alleged destruction of Lama temples; as he remembered the discussion, the Chinese representative had merely explained the reason behind the Government's involvement in the selection of the eleventh Panchen Lama. He suggested that the word "an" in the first sentence should be deleted to read: "... a distinctive religion is essential to the identity ...".

60. Mr. FERRERO COSTA said that the references to the alleged destruction of places of worship should be retained. Such allegations were frequently made and, as Mr. Wolfrum had said, they had been mentioned during the discussion.

61. Mr. SHERIFIS pointed out that the Committee was not competent to comment on the destruction of places of worship unless that destruction had been racially-motivated.

62. Mr. DIACONU agreed that the Committee could discuss religious freedom only in the context of racial discrimination. In the case of China, the Committee had also heard about the Government's efforts to build or repair mosques, temples and other places of worship. Supported by Mr. WOLFRUM he proposed that the second and third sentences of the paragraph should be deleted, and the end of the first sentence should read: "... and in Tibet, including the availability of places of worship and the exercise of religious rights by members of all ethnic groups".

63. Mr. SHAHI suggested the following wording: "... several minority nationalities, [the Committee] regrets that little information was provided with reference to the actual enjoyment of the right to freedom of religion, the preservation of Muslim and Buddhist places of worship and the reports of restrictions placed on the exercise of religious rights of the members of the ethnic groups". He did not wish to refer specifically to the allegations of destruction of mosques, since similar allegations had been made in respect of other countries, such as India, but not mentioned in the concluding observations.

64. Mr. de GOUTTES supported the amendment proposed by Mr. Diaconu to the first sentence. However, he did not agree that the second and third sentences should be deleted, since it was important to give examples of the practices the Committee had in mind. He accordingly suggested that the first sentence should be amended as Mr. Diaconu had proposed and that the second sentence should begin: "Note is taken in particular of the reported destruction ...", continuing with the original text and replacing "alleged restrictions" by "reported restrictions".

65. Mr. FERRERO COSTA suggested that the first sentence should be amended to read: "... including the preservation of places of worship ...", as suggested by Mr. Shahi. The second and third sentences should be retained, as Mr. de Gouttes had suggested, except that the second sentence should begin: "In this regard, note is taken ...".

66. Mr. GARVALOV said that the Committee's concluding observations should not contain references to allegations as if they were proven facts. He supported Mr. Diaconu's original amendment.

67. Mr. RECHETOV, said that he could not support the inclusion of the specific examples quoted in the paragraph because he had no objective evidence that they were true. In paragraph 25 of the draft, the Committee asked for information about the alleged destruction of places of worship: surely that was sufficient. He supported Mr. Diaconu's original amendment.

68. Mr. SHAHI, proposed that he should circulate his amendment, which was similar to Mr. Diaconu's, in writing at the next meeting to provide a basis for further discussion.

69. It was so decided.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Rwanda

70. Mr. WOLFRUM, speaking as co-ordinator of the working group on Rwanda, recalled the declaration on the situation of Rwanda adopted by the Committee at its previous session and its decision to establish a small working group. Since the revised recommendations which he had subsequently drafted had not been well received by the Committee, he was withdrawing them. The working group had met again and had taken the view that, in view of the Committee's reluctance to make any proposals that went beyond the declaration, no further action should be taken at the current session so as not to weaken the content of the declaration, which would in any case appear in the Committee's report. He would have thought that the Committee could perform a useful function in giving some guidance to the constitutional conference referred to in the third paragraph of the declaration, but in the circumstances, the Committee's action at the current session would be confined to reiterating its declaration, with

particular emphasis on the third paragraph, and its offer to be involved i
efforts to resolve the situation. Those conclusions did not prejudge any
action the Committee might wish to take - but under a different procedural
approach - to follow up the report by Mrs. Sadiq Ali.

71. Mr. GARVALOV concluded that the Committee's report of the current se
would thus reflect the fact that the Committee remained seized of its prev
concluding observations on Rwanda and that it reiterated the position
contained in its declaration.

The meeting rose at 1 p.m.

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of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1179th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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Draft concluding observations of the committee concerning the People's Republic of China (continued)

OTHER BUSINESS

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-18005 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PA
UNDER ARTICLE 9 OF THE CONVENTION (continued)

Draft concluding observations of the Committee concerning the fifth, sixt
seventh periodic reports of the People's Republic of China (CERD/C/49/Mis
(conference room paper distributed in English only) (continued)

Paragraph 12 (continued)

1. Following a discussion in which Mr. RECHETOV, Mr. FERRERO COSTA, Mr. GARVALOV and Mr. SHERIFIS too part, Mr. WOLFRUM (Country Rapporteur) order to reflect the Committee's concern, proposed to add the following w at the end of the first sentence: including the preservation of places o worship and the exercise of religious rights by members of all ethnic gro The last three sentences of that paragraph should be deleted.

Paragraph 13

2. Mr. WOLFRUM proposed that in paragraph 13 and in the rest of the te the words "alleged" and "allegations" should be replaced by "reported" and "reports".

3. Mr. RECHETOV said that it would be more correct to use the expressi "limited information" instead of "little information" in the fourth line.

Paragraph 14

4. Mr. GARVALOV, referring to Mr. Wolfrum's proposal concerning paragraph 13, said that replacing "allegations" by "reports" in the second sentence would change the meaning. "Reports" had connotations of certain whereas "allegations" did not.

5. Mr. FERRERO COSTA proposed that for clarity's sake the end of the sentence should be reworded as follows: "members of minority nationaliti may not enjoy the same working conditions as persons of Han origin".

6. Mr. CHIGOVERA said that the second line of the paragraph would rea better if the idea of persons of minority origin were replaced by that o minority groups. Moreover, the Committee had not taken a decision conce the word "allegations". Leaving it in the text would give the impression the Committee considered that the State party had not replied to its que at all or that it did not find the information provided by the Chinese delegation credible.

7. Mrs. ZOU said that in China minority groups were paid the same wag the Han population for the same work. However, some people might take a view.

8. Mr. WOLFRUM said that that was precisely why he had chosen to spea "allegations", which he felt was more appropriate in the context. The

Committee had a heavy workload and he therefore asked Mr. Chigovera to adopt a conciliatory approach on the understanding that his viewpoint would be reflected in the summary record.

9. Mr. CHIGOVERA said that, although not convinced by the arguments put forward, he was willing to withdraw his proposal to enable the Committee to make progress.

10. The CHAIRMAN said that, if he heard no objections he would take it that the Committee accepted the amendments proposed by Mr. Ferrero Costa and Mr. Chigovera. However, the word "allegations" would be maintained.

11. It was so decided.

Paragraph 16

12. In connection with the last sentence of the paragraph, Mr. GARVALOV said that he did not see why the Committee should say that it was concerned. Should the State party give up economic development and modernization because traditional ways of life were to be considered sacrosanct?

13. Mr. WOLFRUM pointed out that in some cases the identity of a population group depended largely on its way of life. It was for the group in question to decide whether or not it wanted to give up that lifestyle. The State should not impose any change upon it.

14. Mr. AHMADU said his first impression had been that the sentence was contrary to the principle of active integration; but he now understood Mr. Wolfrum's point of view. However, some aspects of modernization, such as efforts to make schooling generally available, could not be censured systematically.

15. Mr. DIACONU proposed to replace the word "perpetuate" in the second sentence, which gave the idea that racial discrimination had long been practised, by the word "generate". He agreed with Mr. Garvalov that there were good and bad traditions and that the latter should not be maintained if they were in contradiction with human rights standards. What the Committee should ask was that the groups concerned should not be deprived of their right to their own culture. The following wording would perhaps be more appropriate: "In addition, efforts with respect to economic development and modernization should not deprive members of such ethnic groups of their right to their own culture."

16. Mr. de GOUTTES endorsed Mr. Diaconu's proposal but hoped that the idea of traditional ways of life would be maintained in the text.

17. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee agreed to replace the word "perpetuate" by "generate" and to adopt Mr. Diaconu's proposal concerning the last sentence, as amended by the addition of the words "particularly traditional ways of life" at the end.

18. It was so decided.

Paragraph 19

19. Mr. GARVALOV proposed to replace the word "urges" at the beginning o the paragraph by "recommends".

20. Mr. van BOVEN said that in the first line it would be better to spe "expressions" rather than "forms" of racial discrimination.

21. Mr. FERRERO COSTA pointed out that, since it was indicated in the s sentence of the paragraph that the Government would welcome technical assistance, the Committee's recommendation in the last sentence was unnecessary. He therefore proposed to combine the two last sentences of paragraph to read: "... would welcome technical assistance towards this that is available through the technical cooperation services of the United Nations Centre for Human Rights".

22. Mr. de GOUTTES, in connection with Mr. van Boven's suggestion to re "forms of racial discrimination' by "expressions of racial discrimination" wondered whether it might not be better to speak of acts of racial discrimination, since that was the usual term.

23. The CHAIRMAN said that, with the amendments proposed by the members the Committee, paragraph 19 would read: "The Committee recommends to the Government to make all acts of racial discrimination, as specified in article 4 of the Convention, punishable by law. In this respect, it note with satisfaction indications that the Government would welcome technical assistance towards this end that is available through the technical cooperation services of the United Nations Centre for Human Rights".

24. It was so decided.

Paragraph 21

25. Mr. RECHETOV poposed to replace the reference in paragraph 21 to national minorities by a reference to ethnic groups, and to delete from t first sentence the word "ethnic", which was unnecessary, before "compositi In the fourth line it would perhaps be prudent to specify that the infor should be provided so far as possible.

26. Mr. DIACONU pointed out that if the Committee wished to have a constructive dialogue with the State party it should perhaps use the same terminology. It would therefore be better to keep the word "nationalitie

27. Mr. AHMADU proposed to delete the word "comprehensive" qualifying "information" in the first line.

28. The CHAIRMAN said that he took it that the Committee wished to del the words "comprehensive" and "ethnic" in the first line, to retain the wo "nationalities" throughout the paragraph and to add in the fourth line th words "so far as possible" after "should be provided".

29. It was so decided.

Paragraph 22

30. Mr. FERRERO COSTA proposed that, to take account of the suggestions made during the consideration of the report of the People's Republic of China, mention should be made of all institutions as well as the Party.

Paragraph 23

31. Mr. WOLFRUM proposed that the last word in the sentence, "completed", should be replaced by "expedited", the idea being to accelerate the elaboration and adoption of special regulations for the five autonomous regions.

Paragraph 24

32. Mr. WOLFRUM thought that it would be better to speak of a substantial alteration in the demographic composition of minority regions.

33. Mr. DIACONU considered it would be more reasonable to ask the State party to reconsider, not to halt, policies affecting the demographic composition of minority regions, since the Committee was not sure what those policies were.

Paragraph 26

34. Mr. FERRERO COSTA proposed to delete the last sentence, which duplicated the wording of paragraph 20.

Paragraph 27

35. Replying to a question by Mr. SHERIFIS concerning the expression "favourable conditions of work", Mr. van BOVEN, supported by Mr. FERRERO COSTA, pointed out that the wording was the same as that of article 5 (e) (i) of the Convention.

36. Mr. GARVALOV said he was in favour of mentioning national minorities rather than non-Han nationalities.

37. Mr. RECHETOV thought that it would be better to speak of appropriate measures to be taken by the State party, without specifying the area of such measures, in order to leave the State party full freedom of action.

38. Following a discussion in which Mr. WOLFRUM, Mr. FERRERO COSTA, Mr. CHIGOVERA and Mr. RECHETOV took part, the CHAIRMAN said that, if he heard no objection, he would take it that the original wording was maintained.

39. It was so decided.

Paragraph 28

40. Mr. YUTZIS thought that the Committee was going too far in asking the State party to undertake a comprehensive review of the educational system. Since the principal aim of the paragraph was to ensure that members of

national minorities had access to education, it would be better to say that the Committee recommended that the State should ensure that national minorities had access to education.

41. Mr. SHAHI pointed out that paragraph 28 referred to minority nationalities and minority areas. However, in some of the preceding paragraphs the Committee had adopted the expression "autonomous regions", which was somewhat restrictive since China had only five autonomous regions but a great many autonomous territories and areas where minorities lived. There seemed to be a some confusion, which should be dispelled.

42. Following an exchange of views in which Mr. CHIGOVERA, Mr. WOLFRUM and Mr. FERRERO COSTA took part, the CHAIRMAN asked Mr. Shahi to review the whole text of the draft to see where the reference should be to autonomous regions and where to autonomous territories or territories where minorities lived.

Paragraph 29

43. Mr. YUTZIS said that the wording of the paragraph was too neutral and that the adverse effects of economic development should be mentioned.

44. Mr. CHIGOVERA pointed out that economic development did not have adverse effects alone.

45. Mr. GARVALOV suggested that the wording of paragraph 16 might be used again in paragraph 29.

46. Mr. RECHETOV said that it was difficult for the Committee to speak at the outset of the adverse effects of economic development on the exercise of certain rights since it was unable to determine the adverse or positive nature of all the consequences of economic development.

47. Following suggestions made by Mr. WOLFRUM, Mr. DIACONU, Mr. SHAHI and Mr.RECHETOV, the CHAIRMAN proposed that the Committee should recommend that special attention should be given to any adverse effects of economic development and modernization.

48. It was so decided.

Paragraph 30

49. Mr. de GOUTTES proposed to include before paragraph 30 the following new paragraph:

> "With respect to article 6 of the Convention, the Committee recommends that in its next report the State party should provide information and statistics on complaints and judicial decisions in respect of acts of racism in all their forms".

50. In connection with the reference to making the Convention widely available, which appeared at the end of paragraph 30, he said that he would

prefer to supplement the text of paragraph 21 by the addition of wording along the lines of that already agreed by the Committee in its conclusions concerning the reports of other States parties, namely:

> "The Committee recommends that the State party should give publicity at the internal level to its seventh periodic report and the concluding observations of the Committee".

51. Mr. CHIGOVERA said he would like to delete the reference to the United Nations Decade for Human Rights Education, as in the Committee's conclusions concerning the report of Bolivia.

52. Mr. SHERIFIS said that, if the amendment of Mr. de Gouttes was adopted, he did not see how the last sentence of the current text of paragraph 30 would read.

53. Following a discussion among Mr. SHERIFIS, Mr. GARVALOV, Mr. WOLFRUM, Mr. AHMADU and Mr. FERRERO COSTA as to how the State party should be asked to give nation-wide publicity to the Committee's terms of reference and its work, Mr. WOLFRUM proposed the following wording: "The Committee recommends that the text of the Convention, the State report and the present concluding observations of the Committee be widely disseminated and available in national languages, particularly those spoken in autonomous areas."

54. The CHAIRMAN suggested that the Committee should adopt that text.

55. It was so decided.

Paragraph 31

56. Mr. SHERIFIS recalled that the Committee had decided to moderate the recommendation every time it had occasion to make it by asking the State party to ratify the amendments in question at its earliest convenience.

57. Mr. SHAHI pointed out that paragraph 2 of the conclusions should refer to 56 nationalities including the Han, and not 55.

58. In accordance with the request that had been made to him, he explained that the expression "autonomous regions" was the right one in paragraphs 11, 13, 23 and 24 but that in paragraph 28 it would be better to speak of autonomous "areas".

59. Mr. CHIGOVERA, speaking in connection with Mr. Shahi's statement, said that in paragraphs 11 and 24 the words "autonomous areas" would be more appropriate.

60. Mrs. ZOU disputed the validity of the allegations in some paragraphs of the conclusions. In connection with paragraph 11 specifically, the Committee had probably not clearly understood the explanations given by the Chinese Ambassador. She recalled that he had given the census figures for 1990 and 1995, which showed that in Tibet the Tibetan population, already very much in the majority, had increased even more in proportion to the Han population.

The same thing had been observed in Xinjiang during that period. She requested that her reservations should be recorded in a footnote.

61. Mr. WOLFRUM said that statistics could be misleading. For instance, in 1949 the proportion of Han had been only 6.9 per cent in Xinjiang, but by 1953 it had risen to 37.5 per cent. He concluded that recent census figures did not reflect previous migrations.

62. Mrs. ZOU explained that the 1953 figures had been calculated just after the liberation of Tibet which had brought about massive population movements, but after which the troops had been withdrawn.

63. Mr. WOLFRUM said that he had been speaking of Xinjiang and not Tibet. He would prefer to resume the discussion when the next report of China was considered.

64. Mr. FERRERO COSTA drew Mrs. Zou's attention to the fact that the experts on the Committee were independent and did not represent their Governments.

65. Mr. SHAHI asked Mr. Wolfrum how he justified the reference in paragraph 11 to Han wishing to settle in autonomous regions.

66. Mr. WOLFRUM pointed out that in paragraph 11 the Committee stated that it was concerned with reports concerning incentives granted to the Han. It was for the Government of the People's Republic of China to say whether those reports were released or not.

67. Mr. van BOVEN pointed out that although other members of the Committee including the current Chairman had in the past found themselves in a position similar to that of Mrs. Zou, the Committee had never included footnotes about them in its conclusions. Since her views would be reflected in the summary record of the current meeting, Mrs. Zou ought to be able to withdraw her request. It would be useful, however, if the question of principle involved were discussed with the chairpersons of the other treaty bodies. While he was not against including footnotes, he suggested that for the sake of consistency the Committee should avoid them in the absence of a decision to the contrary.

68. Mr. RECHETOV said that he had never had any doubts about the experts' independence, but considered that the principle that an expert should not participate when his own country's report was considered was not justified. Indeed, it was incompatible with article 8 of the Convention, which provided that the experts should be representative of the principal legal systems. It was the Committee's terms of reference under the Convention, not the practice of other bodies, that should guide the conduct of the experts. By barring itself from hearing an expert from the country whose report was under consideration, the Committee would be depriving itself of valuable information. He agreed with Mr. van Boven that a footnote was not the best way of expressing disagreement.

69. Mr. GARVALOV said that of course Mrs. Zou had the right to express her opinion. He considered that when any expert had serious reservations to some

or all of the draft conclusions, that should be made clear. However, since summary records were available, Mrs. Zou might not insist on including a footnote.

70. Mr. de GOUTTES said the present discussion showed that a problem existed with respect to the attitude of an expert when the Committee was considering his country's report. As he (Mr. de Gouttes) saw it, an expert had a perfect right to speak at that juncture, but it was wiser for him not to do so.

71. He pointed out to Mr. Pechetov that article 8 (1) also referred to the need for experts to be impartial. Among other bodies with independent members, the European Court of Human Rights wished to retain at least an "appearance" of impartiality, and in one of its recommendations the Committee itself had stressed the need to respect the independence of the experts. They should therefore contribute to that respect by their own attitude. He agreed with Mr. van Boven that it would be advisable for the Chairman to bring up the matter at his meeting with the chairpersons of the other treaty bodies.

72. Mr. AHMADU said that, whatever the moral standing and impartiality of the experts, they were not men from Mars. They could take part in considering the report of their own country, not necessarily to defend it but merely to give further information that might be useful to the Committee that would not be a departure from the duty to be impartial. At the forty-eighth session of the Committee he had taken part in the discussions concerning Nigeria - true, in closed session. However, in the interest of the members of the Committee themselves, it would be better not to include in reports footnotes such as the one requested by Mrs. Zou: thus the experts could make the point to their authorities that the Committee's established practice was that an expert should not take part in the consideration of the report of his own country.

73. He therefore hoped that Mrs. Zou would not insist on including a footnote.

74. The CHAIRMAN requested the members of the Committee to confine themselves to considering the request submitted by Mrs. Zou at the current meeting, rather than making the discussion more general.

75. Mr. LECHUGA HEVIA considered that all the experts had the right to take part in all the Committee's discussions, including those on the report of their own country. Mrs. Zou had expressed her opinion and had given further details concerning China; she had the right to ask for a footnote indicating her disagreement with certain parts of the report, but it was for the Committee to decide whether or not to grant that request. His own view was that it was better not to refuse.

76. Mr. CHIGOVERA said that the present discussion clearly showed that the members of the Committee were not agreed on the implications of article 8 of the Convention as far as their duties were concerned: apparently they did not even agree on the meaning of the word "implications". The Committee had to find time to consider that question in the light of the opinions to be expressed at the meeting of the chairpersons of the treaty bodies. In the absence of a decision on that point the Committee could not grant Mrs. Zou's

request, since at its previous session it had rejected a similar request by Mr. Banton (CERD/C/SR.1153, para. 41). He would therefore be happy if Mrs. Zou withdrew her request.

77. Mrs. ZOU said that she had asked for the footnote to be included having been assured by the Chairman that she could do so. If her request created too many difficulties she was prepared to withdraw it, on the understanding that her views would be set out in the summary record.

78. Mr. YUTZIS said that the present discussion was taking place partly because the Committee had not considered the report of China in sufficient depth. The Committee should learn from that and avoid making the same mistake at its next session. Secondly, it was essential for the members of the Committee not merely to be impartial but to show themselves to be impartial: a good way of doing so was not to take part in the Committee's discussions when the reports of their own countries were being considered. Thirdly, the freedom of expression of the members of the Committee must not be infringed in any way. The Committee had to find a fair balance between those three requirements.

79. Mr. VALENCIA RODRIGUEZ said that up till now, in a desire to discharge their duty of impartiality under article 8 of the Convention, the members of the Committee had voluntarily refrained from participating in the consideration of their own country's report: either they did not attend the meeting or they kept silent. Up till now the established practice had been not to mention the fact that the particular experts did not participate, since that might be interpreted as meaning that expert in question had either wished to support or, on the contrary, not to support his country's official position, which would be a breach of the duty of independence and impartiality set out in article 8 of the Convention and also in the solemn declaration made by the members of the Committee when they took up their duties.

80. He stressed the need, whenever a report was considered, for a very extensive dialogue with the representative of the State party, who was its spokesman and put forward its official position.

81. Mrs. SADIQ ALI pointed out that she had never taken part in the consideration of her country's report. She had merely replied to a question about languages on a single occasion.

82. Mr. SHAHI said he was also in favour of the practice of experts not taking part in the consideration of their own countries reports. However, it should be realized that not all countries understood that when one of their nationals was a member of a body like the Committee which was highly critical of that country, their expert was not to blame. It would therefore protect the independence of members to make sure that the Committee's practice was known to all: a given expert could thus justify not taking part in a debate in which his country might be strongly criticized by drawing attention to the established practice. He could therefore understand Mrs. Zou's request. He hoped that the issue would be considered at the meeting of the chairpersons of the treaty bodies and that an appropriate article might be included in the Committee's rules of procedure. It was true that the members of the Committee

were independent experts appointed by the General Assembly, but at the proposal of their Government. Between the experts and their Governments, therefore, there was a link that could not be totally severed.

83. Mr. WOLFRUM said that since the Chairman had encouraged Mrs. Zou to ask for a footnote indicating her position to be included in the Committee's report, the note ought to be included: the Committee should not reject her request. He too considered that experts should not take part in the consideration of reports submitted by their own countries. Non-participation should be the rule, but exceptions allowed. He unreservedly supported the statement of Mr. Yutzis. The Committee's difficulties in adopting its conclusions concerning India and China were in his view due to the inadequacy of its discussions with the representatives of the States parties. He therefore appealed to the Chairman to ensure that, at the next session, consideration of the reports of States should be carried out according to the previous arrangements: the report should be presented by the State party in the afternoon, and the representative of the State should provide replies and the discussion with the Committee should be held at the next morning's meeting. That gave the delegation of the State party time for thought. The Committee had used that procedure at previous sessions and the results had been much more satisfactory.

84. The CHAIRMAN pointed out that Mrs. Zou was no longer asking for a footnote to be included, since her views would be reflected in the summary record.

85. With respect to the organization of the Committee's work at its next session, proposals would be put to the members for consideration before the end of the current session.

86. Mr. de GOUTTES pointed out that there were two kinds of footnote: the footnote could say that the expert did not endorse certain observations of the Committee or it could say that as an independent expert a member of the Committee had remained outside the discussion. It was such a note that Mr. Banton, at that time an ordinary member of the Committee, had proposed to include in the Committee's report at the forty-eighth session when the Committee had considered the report of the United Kingdom. He (Mr. de Gouttes) had supported that proposal (CERD/C/SR.1153, para. 34). The issue should be brought up at the meeting of the chairpersons of the treaty bodies.

87. He wished to make a statement on another point: at the current session the Committee had adopted almost all of its conclusions on various countries in the only language version available, namely English (with the exception of the conclusions concerning Brazil and Korea). Accordingly, he reserved his position on the French translation, since the conclusions had not been adopted in his official working language. That statement applied to the conclusions concerning all the countries except Brazil and Korea.

88. The CHAIRMAN recalled that the Committee had acknowledged the legitimacy of the second point made by Mr. de Gouttes.

89. Mr. RECHETOV said the Committee's work showed that there was no doubt about the independence of the experts who were its members. They did not hesitate to criticize their own Governments. He had always defended the ri to give his own views as an independent expert if the need arose.

90. Mr. GARVALOV, speaking on a point of order, recalled that the report the Committee as a whole, including footnotes and references, was a collect document which had to be approved by the entire Committee.

91. The draft conclusions of the Committee concerning the fifth, sixth ar seventh periodic reports of the People's Republic of China as a whole, as orally amended, were adopted.

OTHER BUSINESS

92. Mr. AHMADU asked for a final version of the conclusions adopted by th Committee to be made available to the members before they left Geneva. Conclusions such as those just adopted concerning a country as important a China would give them powerful arguments to bring up with their own authorities: they could make the point that the Committee had not been reticent in making suggestions and recommendations to the State party.

93. Mr. SHAHI, speaking on a point of order, asked whether the Secretari could not distribute to the members of the Committee a corrected version o the conclusions concerning India so that members who so desired could writ the amendments adopted on their own copies.

94. The CHAIRMAN said that the necessary arrangements would be made by t Secretariat.

The meeting rose at 6 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1180th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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Draft concluding observations concerning the eighth to twelfth periodic reports of Mauritius and the fourth to seventh periodic reports of Namibia

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The meeting was called to order at 10.10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Israel

1. Mr. van BOVEN, speaking as rapporteur for Israel, recalled that followi a massacre in Hebron in 1994, the Committee had adopted a decision asking for further information, and had discussed the issue at length at its August 1994 session. A report had subsequently been received from the Israeli authoritie on their own investigations which the Committee had published as being pertinent to its work. At its forty-sixth session, the Committee had adopted a statement requesting the Israeli Government to expedite its seventh and eighth periodic reports and to include in them the information earlier requested. Although those reports had not yet been received, the Chairman ha received a letter from the Deputy Permanent Representative of Israel stating that his Government regretted the delay in the matter of the outstanding reports, which would be submitted as soon as possible.

2. In the light of such positive information he proposed that the Committe should recall the statement it adopted at its forty-sixth session, note the letter to the Chairman, reiterate its request that the reports be submitted a soon as possible prior to the Committee's next session and, while keeping ope its dialogue with Israel, remove Israel from the list of countries to be considered under early warning and urgent procedures.

3. Mr. GARVALOV expressed his full support for Mr. van Boven's proposal.

4. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to proceed as Mr. van Boven had proposed.

5. It was so decided.

Papua New Guinea

6. Mr. WOLFRUM, speaking as rapporteur for Papua New Guinea, said that he had received no further information in respect of the dispute concerning Bougainville and could only conclude that peace had returned. Negotiations were continuing and no violations had been reported. He therefore proposed that Papua New Guinea be removed from the list of countries considered under early warning and urgent procedures, on the understanding that consideration could be resumed in the event of any new developments.

7. It was so decided.

The Federal Republic of Yugoslavia (Serbia and Montenegro)

8. Mr. WOLFRUM, speaking as rapporteur for the Federal Republic, recalled that a small mediation mission consisting of himself, Mr. Ahmadu and Mr. Rechetov, had visited Kosovo in 1993 to try and find a way of improving

the human rights situation there within the scope of the Committee's mandate, without touching upon major political issues. The group had concentrated on the re-introduction of the Albanian language into schools in the Kosovo area, which had involved reopening some schools, reinstating teachers and having courses based on the 1990 curriculum. It had also concentrated on the reinstatement of Albanian doctors and nurses and on the use of the Albanian language in the media.

9. The mission had been successful and the group had reason to believe, from the positive signals given by all parties concerned, that further success was possible. In the meantime the States parties, following a decision by the United Nations General Assembly, had decided to suspend the membership of the Federal Republic which in turn, feeling that some of its rights were being denied, had decided to withdraw its official cooperation with the Committee. Despite that decision, it had produced a report (E/CN.4/Sub.2/1996/35) for the Sub-Commission on Prevention of Discrimination and Protection of Minorities which the Committee might wish to consider in view of the amount of relevant information it contained. The Sub-Commission also had before it a draft resolution on the situation of human rights in Kosovo (E/CN.4/Sub.2/1996/L.4) which was not consistent with the facts as presented in the report.

10. On the initiative of Mr. Rechetov, a meeting had taken place between himself and Mr. Rechetov and the Deputy Minister of Foreign Affairs of the Federal Republic, whose position had been the same as that taken earlier by the Permanent Representative, namely, that as long as the membership of the Federal Republic was suspended and its rights not fully recognized, it could not cooperate with the Committee. He and Mr. Rechetov had argued against that position as being politically unwise, and had been assured that their argument would be seriously considered. The Deputy Minister had promised that before the Committee's meeting in March 1997 he would inform the Chairman of any decision taken by the Government in the light of developments at the 1996 General Assembly. Any further action by the Committee at the present session would therefore be counter-productive.

11. He therefore proposed that the Committee should keep the issue on the agenda of its fiftieth session and mention in its report the informal discussion held at the present session.

12. Mr. SHERIFIS, commending the group on its high-level meeting, said that the Committee should take a flexible approach with Belgrade, keep the issue on its agenda and evaluate the situation at its next session in the light of developments in the General Assembly and any other developments in the area.

13. Mr. GARVALOV fully endorsed that recommendation. The Committee should bear in mind that the position of the Federal Republic was one which it had taken in respect of all human rights bodies. It should therefore keep the matter on its agenda and highlight the possibility of the mission resuming its mandate.

14. Mr. van BOVEN, endorsing the conclusions of the rapporteur, suggested that the Committee's brief discussion should be reflected in its report to the General Assembly under the chapter concerned with early warning and urgent procedures.

15. Mr. DIACONU said that the significant contribution which the mediation group had made to the Committee's work might well open new avenues to the Committee. There was no doubt that the acts of violence and abuses in Kosovo and the deep division within civil society came within the purview of its Convention. However, it could not take any decision which would affect the present impasse, and its contribution in future would be in helping to restor the fabric of society and helping the parties find solutions which would put an end to the suffering of their populations.

16. In addition to the reference in the report suggested by Mr. van Boven, mention should be made of the Committee's readiness to continue its mission o good offices.

17. Mr. de GOUTTES fully agreed with the conclusions of the rapporteur. Th matter should be kept on the Committee's agenda and the High Commissioner for Human Rights informed accordingly. The Committee should strongly emphasize its concerns about the situation in Kosovo, the need to rebuild the social fabric and its readiness to resume its mission.

18. Mr. FERRERO COSTA emphasized the need for the Committee to keep the matter on its agenda and to make known its view that the problem in Kosovo continued. The Committee should continue its informal dialogue with the authorities if formal contact was not possible, and indicate its intention to the authorities. It would be useful for the Committee to have a more detaile report on the situation in Kosovo at its next session, prepared either by Mr. Rechetov or Mr. Wolfrum or by the secretariat.

19. Mr. VALENCIA RODRIGUEZ expressed support for the conclusions of the rapporteur and the proposals by Mr. Sherifis. It was important that the Committee should maintain its dialogue with the authorities and establish cordial relations with Belgrade with a view to resuming its mission to the Federal Republic.

20. Mr. YUTZIS agreed that the Committee should leave all doors open so tha it could continue to exercise some degree of influence over a situation which called for the restoration of the civil and social fabric. Were it to continue its task of mediation, it should perhaps devise alternative investigative or follow-up methods so as to avoid any unnecessary repetition of activities that had not contributed substantially to evaluation or further action. It was also important to maintain unofficial channels of communication.

21. Mr. AHMADU, speaking as one of the three members of the good offices mission, agreed that the matter should remain on the Committee's agenda and that the possibility of carrying out a further mission to Kosovo and continuing the very fruitful dialogue with the authorities should be kept open. Meanwhile, in view of the disturbing developments on the ground, an updated report or review of the situation would be welcome.

22. Mr. SHAHI agreed the item should be kept on the agenda and deferred to the consensus view that the good offices mission should, if possible, continu its work, although he was sceptical about the outcome. The primary consideration to be borne in mind was the purpose of the mission as referred

to in the decision on the Federal Republic of Yugoslavia (Serbia and Montenegro) adopted by the Committee at its forty-eighth session, which was to help reopen a dialogue for a peaceful solution of issues concerning respect for human rights in Kosovo, with particular emphasis on the elimination of all forms of racial discrimination. He also drew attention to a strongly worded resolution (E/CN.4/Sub.2/1996/L.4) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-eighth session, warning of the threat to peace in the region constituted by the situation in Kosovo, calling for a resumption of the internationally brokered dialogue between the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the representatives of the ethnic Albanians in Kosovo, demanding the revocation of all discriminatory legislation and stressing the importance of an international monitoring presence in Kosovo. The Committee should further bear in mind developments at the next United Nations General Assembly before proceeding with the good offices mission.

23. Mr. RECHETOV subscribed to the views expressed on the possibility of extending the mandate of the good offices mission. He agreed with Mr. Shahi's emphasis on promoting the elimination of all forms of racial discrimination as being the Committee's guiding principle, and with his assessment and that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities that the situation in Kosovo was a threat to peace in the region; it was also a threat to peace worldwide. Since the Committee was agreed on the approach of the good offices mission and the purposes it should serve, and because of the explosive situation in Kosovo, it would be preferable not to wait until the Committee's next session before taking a decision on the continued work of the mission, but to leave it to the discretion of the Chairman to take the initiative should developments at the next General Assembly or changes in States' positions make it possible for the mission to resume its work earlier.

24. The CHAIRMAN suggested that, in the light of the information provided by Mr. Wolfrum on the situation in the Federal Republic of Yugoslavia and the proposals concerning the Committee's action in respect of the State party, it might be removed from the list of States parties that were subject to the overdue reports review procedure.

25. Mr. WOLFRUM observed that the document to which he had referred (E/CN.4/Sub.2/1996/35), addressed to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, could not be regarded as a report by the State party to the Committee. The procedure for overdue reporting should therefore be left unchanged.

26. Regarding the good offices mission, the Committee should confirm its agreement that no action was to be taken at the current session. Since, however, the mission to Kosovo had proved useful, if inevitably limited in scope, and was not viewed unfavourably by the authorities, the door should be left open for it to resume its work as soon as circumstances permitted. He supported Mr. Rechetov's suggestion about leaving that initiative with the Chairman. Mr. Rechetov had also rightly pointed to the instability of the

situation in Kosovo. It was important to defuse what was reported to be mounting tension there as soon as possible. Should there be no developments permitting a resumption of the mission, the Committee should review the situation at its spring session.

27. The CHAIRMAN said that he took it that the Committee wished to proceed proposed by Mr. Wolfrum.

28. It was so agreed.

Draft decision on Bosnia and Herzegovina (CERD/C/49/Misc.11/Rev.2)

29. Mr. van BOVEN said that the revised text before the Committee, now formally a draft decision, incorporated proposals by various members and, in paragraph 2, reflected aspects of the Committee's discussion with the representative of the State party. The third paragraph, while emphasizing t importance of free, fair and democratic elections, drew attention to concern expressed during the Committee's discussions about holding elections under t present circumstances. The other paragraph that had been amended, paragraph 4, incorporated a proposal by Mr. Rechetov. He was also prepared principle to incorporate an amendment by Mr. Shahi, subject to a formal proposal for its wording, reflecting his concerns about the possible adverse consequences of the scheduled withdrawal of the implementation force (IFOR) the end of the year.

30. Mr. WOLFRUM fully subscribed to the well-balanced, neutrally worded dra decision, drawing attention in particular to paragraph 3, which made it quit clear that the subject of the paragraph fell squarely within the Committee's mandate, and paragraph 4, which took Mr. Rechetov's proposal into account. He, too, sympathized with Mr. Shahi's concerns, but would prefer to see the proposed wording in writing.

31. Mr. de GOUTTES fully supported the draft decision for the same reasons Mr. Wolfrum. It was the logical follow-up to the Committee's declaration at its March session. He favoured its adoption as it stood, subject to Mr. Shahi's proposal, which might perhaps be accommodated in paragraph 2.

32. Mr. GARVALOV expressed his approval of the wording of the draft decisio which updated the Committee's views on an important issue. Paragraph 2 rightly incorporated suggestions made by the representative of Bosnia and Herzegovina, and he welcomed the reference in paragraph 3 to free, fair and democratic elections, which was in line with a concern he had previously expressed, namely that if the next elections were not free, fair and democratic, they might divide the country along ethnic lines, thus impairing the integrity of the State party. He was pleased to see that Mr. Rechetov's suggestion had been incorporated. He would support the inclusion of wording expressing the Committee's concern about the possible repercussions of a withdrawal of IFOR.

33. Mr. CHIGOVERA asked for clarification about the thrust of the second pa of paragraph 3. Was the Committee suggesting that it was inopportune for elections to be held at the present stage?

34. Mr. FERRERO COSTA said that he, too, had some doubts about the interpretation of the third paragraph. The Committee should not give the impression that it was suggesting a postponement of the elections. The emphasis should be on appropriate measures to ensure that the elections did not lead to ethnic segregation and division.

35. Mr. SHAHI proposed the addition of the following new paragraph at the end of the text: "Apprehensive that the separation of the warring parties and the peaceful conditions brought about by the Implementation Force (IFOR) may not continue to obtain after the envisaged withdrawal of this force by the end of 1996, [the Committee] invites the attention of the Security Council, through the Secretary-General, for dealing with any such emergency that may arise, by the establishment of a successor force to the Implementation Force".

36. Mr. van BOVEN said he could accept Mr. Shahi's proposal, although an alternative to the word "separation" might be found.

37. He felt that the text of paragraph 3 accurately reflected the views expressed by members - some had been in favour of the elections going ahead and some had not - but suggested that the paragraph should be amended to read: "... the holding of elections, important as they are, may under the present circumstances reinforce ...".

38. Mr. SHERIFIS said that the Committee must not give the impression that it opposed the holding of elections. He suggested that paragraph 3 should be expressed in a more positive manner: instead of "preoccupations" or "fear", the Committee should express its "earnest hope" that the elections would not entrench or encourage patterns of ethnic segregation and ethnic division.

39. Mr. AHMADU said that paragraph 3 merely stated the facts. There were risks involved both in holding elections and in not holding them: all the parties concerned were now committed to the elections, and the Committee could only point out the possible dangers.

40. He supported Mr. Shahi's amendment, which went beyond the elections to consider developments in the long term.

41. Mr. RECHETOV agreed with Mr. Sherifis that the present paragraph 3 was too negative. He proposed the following wording: "The Committee is fully conscious of the fact that only the holding of free, fair and democratic elections is likely to contribute to laying the foundations ...", continuing with the existing text.

42. He supported Mr. Shahi's amendment, which rightly placed the responsibility for action on the Security Council and the Secretary-General.

43. Mr. LECHUGA HEVIA expressed concern that Mr. Shahi's amendment assumed that the elections would serve no useful purpose. If the Committee

recommended the establishment of a successor force to IFOR even before the elections had taken place, it was in effect saying that the elections could not improve the situation.

44. Mr. YUTZIS said that paragraph 3 accurately described the existing situation. If the wording was ambiguous, it was because the situation was ambiguous, and changing the text would not be any solution. He accordingly supported the original text.

45. Mr. FERRERO COSTA said that the original text was the best that the Committee was likely to achieve. The more positive formulation suggested by Mr. Sherifis carried a number of risks; he accordingly supported the original version, with the amendment proposed by Mr. van Boven, and hoped that the text would be adopted by consensus.

46. Mr. WOLFRUM said that the original text reflected the real situation. He could accept Mr. van Boven's proposed amendment, although it merely repeated the substance of the first two lines of the paragraph, but he could not accept Mr. Sherifis' proposal.

47. Mr. VALENCIA RODRIGUEZ said that while he supported Mr. Rechetov's proposal, he also understood Mr. Sherifis' concern that the Committee should not give the impression that it opposed the elections. He proposed the following wording: "... the Committee expresses the earnest hope that, in view of the actual deficiencies in the process of ... the holding of elections may not reinforce patterns of ethnic segregation ...". He was happy to accept Mr. Shahi's proposal.

48. Mr. de GOUTTES said that the text should clearly express the Committee's view that the elections should go ahead in the best possible conditions and its fears concerning the possible consequences of the withdrawal of IFOR. The amendment proposed by Mr. van Boven, or some formulation such as: "The Committee, while approving the principle of elections, expresses its serious preoccupations ..." should meet the first concern adequately. If the Committee preferred Mr. Sherifis' more positive formulation, it could adopt something along the lines of: "the Committee hopes that the elections will not create the risk of ethnic segregation in view of the alarming reports of deficiencies in the process of voter registration ...".

49. Mr. SHAHI said that the original version of paragraph 3 accurately described the existing situation as reported by international observers. Perhaps some formulation such as "The Committee, while fully supporting the holding of elections ..." could be used.

50. In reply to Mr. Lechuga Hevia, he said that his suggestion that a successor force to IFOR should be established was not linked in any way with the elections. Even if the elections went well, the situation might still deteriorate rapidly. He did not, therefore, feel that his proposed new paragraph prejudged the results of the elections.

51. Mr. CHIGOVERA asked whether the Committee was trying to say that it would be unwise to hold the elections at all. If it was, then Mr. van Boven's amendment changed nothing. If it was not, then it should adopt Mr. Sherifis' proposal.

52. Mr. YUTZIS said that the original text was balanced. It did not question the usefulness of the elections, but merely stressed the dangers of the existing situation, which had been widely recognized by international public opinion. He felt that the original text, with the revision suggested by Mr. van Boven, was the best option.

53. Mr. GARVALOV said the text of paragraph 3 should remain as it stood, with the amendment proposed by Mr. van Boven.

54. In the same way as the continued presence of international forces had been necessary in Mostar following elections, a successor force should remain in Bosnia and Herzegovina after the elections there to prevent a renewed outbreak of hostilities. The Committee should, however, consider deleting "the separation of the warring parties" from the proposed new paragraph 9.

55. Mr. van BOVEN (Country Rapporteur) said that, when drafting the decision, he had tried to take full account of the views of members of the Committee. The text of paragraph 3, with the amendment he had already suggested, should stay as it was. The first part of the paragraph had been based on the Dayton Peace Accords and, as such, should not be changed.

56. The amendment proposed by Mr. Garvalov to the new paragraph 9, was acceptable, with the corresponding drafting changes, and possibly the insertion of "eventual" before "establishment".

57. Mr. SHERIFIS said that he could not associate himself with any text that implied that the Committee had taken a position that could be interpreted as hostile to elections.

58. Mr. RECHETOV associated himself with the comments made by Mr. Sherifis. He had some difficulty with the apparent link made between democratic elections and the development of democracy in Bosnia and Herzegovina and wondered whether, given the situation in Bosnia and Herzegovina, the holding of completely democratic elections in an ethnically pure region might not increase segregation and possibly lead to the emergence of communities with secessionist aspirations.

59. Mr. WOLFRUM said that he could not accept the changes proposed by Mr. Sherifis and, if necessary, he would ask for them to be put to a vote.

60. The CHAIRMAN suggested that the Committee might wish to resume consideration of the draft decision on Bosnia and Herzegovina later, to give members a chance to discuss the text informally.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Draft concluding observations concerning the eighth to twelfth periodic reports of Mauritius (CERD/C/49/Misc.19/4)

Paragraph 11

61. In response to concerns raised by Mr. CHIGOVERA, the CHAIRMAN suggested that paragraph 11 should be deleted.

Paragraph 24

62. Mr. SHERIFIS proposed that "at its earliest convenience" should be inserted.

63. The draft concluding observations concerning the eighth to twelfth periodic reports of Mauritius were adopted with the proposed amendments and subject to possible minor drafting changes.

Draft concluding observations concerning the fourth to the seventh periodic reports of Namibia (CERD/C/49/Misc.20)

Paragraph 16

64. Mr. CHIGOVERA (Country Rapporteur), responding to comments made by Mr. FERRERO COSTA, said that the reference to "apparent delays" was necessary since Namibia was a young country and was trying its best to overcome the problems it had inherited.

Paragraph 17

65. Mr. FERRERO COSTA proposed that "any" should be deleted.

Paragraph 19

66. Mr. WOLFRUM proposed that "in particular vulnerable groups among them" should be inserted after "black people".

67. Mr. CHIGOVERA, in response to a point raised by the CHAIRMAN, said that "resources" should replace "income".

68. Mr. SHERIFIS said that reference should be made somewhere in the text to the recommendation that States parties should consider ratifying the amendments concerning the financing of the Committee.

69. The draft concluding observations concerning the fourth to seventh periodic reports of Namibia were adopted with the proposed amendments and subject to possible minor drafting changes.

The meeting rose at 1.00 p.m.